157 219

157-219

THE LAW ASSOCIATION
—OF—
PHILADELPHIA.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

29

No. ~~1314~~. ~~800~~ 450 ~~199~~

THE NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA EX REL. THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 27, 1890.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1314.

THE NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF LOUISIANA EX REL. THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from civil district court	2	1
Petition for mandamus	2	1
Affidavit to petition	6	4
Order for alternative writ of mandamus	6	4
Exhibit—Letter of B. M. Harrod to J. G. Clark, April 27, 1889, &c.	7	4
Exception and answer	11	7
Affidavit attached to exception and answer	14	9
Testimony taken in open court, &c.	14	9
Testimony of A. Brittin	16	10
B. M. Harrod	26	16
I. W. Browne	35	22
E. T. Leche	39	24
Fred. Wintz	44	27
Joseph A. Walker	65	40
Joseph A. Walker (recalled)	75	46
Letter of General Beauregard to every railroad company in the city	81	49
Submission	82	50
Order reopening case	82	50
Submission	83	51
Opinion	84	51

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1890.

	Original.	Print.
Judgment	98	58
Motion for new trial	103	60
Rule for new trial submitted	104	61
Exception of *res adjudicata*	105	61
Opinion on application for new trial	107	62
New trial refused	111	63
Exception for *res adjudicata* overruled	111	64
Motion for appeal	112	64
Bond of appeal	114	65
Agreement as to evidence, &c.	115	65
Copy of transcript in case No. 20655, Connelly *vs.* New Orleans City and Lake Railroad Company	117	66
Petition	117	66
Exception	120	67
Judgment on exception	120	68
Rule for new trial	121	68
Judgment on rule	121	68
Supplemental and amended petition	121	68
Order to file supplemental and amended petition	124	69
Exception	124	69
Second supplemental and amended petition	125	70
Order to file second supplemental and amended petition	127	71
Judgment on exception	128	71
Exception	128	71
Judgment on exception	128	71
Exception	129	72
Third supplemental and amended petition	129	72
Order to file third supplemental and amended petition	132	73
Judgment on exception	132	73
Answer	133	73
Judgment on merits	134	74
Statement of facts	135	74
Notarial act by Jos. D. Taylor	142	77
Documents referred to in statement of facts	148	80
Resolution of city council	151	81
Statement of Judge Monroe	152	81
Certificate of the clerk of the civil district court	153	82
Copy of the report of the condition of streets, bridges, tracks, etc., of the New Orleans City and Lake Railroad Company	154	82
Letter of James G. Clark to Shakspeare, mayor	157	84
Proceedings of the city council, regular session of May 7th, 1889	158	85
Resolution No. 248 (council series), adopted by the city council April, 1883	165	88
Resolution No. 600 (council series), adopted February, 1884	167	89
No. 523 (council series)	168	90
Letter of L. W. Brown to Maj. B. M. Harrod, November 24, 1888	171	91
Meeting of the committee on franchises	174	93
"That big damage suit" by Jno. M. Bonner	181	96
Copy of transcript of proceedings of the United States circuit court in the case No. 9239, entitled New Orleans City and Lake Railroad Company *vs.* Crescent City Railroad Company	184	98
Petition to set aside injunction	186	98
Exception	188	99

	Original.	Print.
Order—First ground in rule to dissolve amended	189	100
Order—Motion to dissolve postponed, etc.	190	100
Demurrer	190	101
Exception of plaintiff to defendant's motion to dissolve	192	101
Opinion	193	102
Decree	195	103
Petition to amend	196	103
Petition of plaintiff for rehearing	199	105
Sale, marked Exhibit "A"	202	107
Amendment to contract, marked Exhibit "D"	221	116
Ordinance No. 7121, marked Exhibit "C"	226	119
Letter, marked Exhibit "E"	228	120
Letter, marked Exhibit "F"	229	120
Motion to vacate order permitting plaintiff to file, &c.	230	121
Order—Rehearing refused, etc.	231	122
Order dismissing bill	231	122
Motion and order, dismissal set aside, &c.	232	122
Order—Bill dismissed	233	123
Clerk's certificate	233	123
Charter and by-laws of the New Orleans City & Lake R. R. Co., &c.	235	123
Charter N. O. City & Lake R. R. Co.	237	124
By-laws N. O. City & Lake R. R. Co.	250	134
Charter N. O. City R. R. Co.	254	137
Proceeding of stockholders' meeting, May 15 and 17, 1883	262	142
Sale and transfer from N. O. City R. R. Co. and N. O. City & Lake R. R. Co.	265	145
Sale of the right of way and franchises	281	156
Resolutions of board of directors	295	166
City ordinances relating to foregoing act	296	166
Amendatory contract with City of New Orleans	299	168
Contract, City of New Orleans with J. B. Slawson	302	171
Contract, City of New Orleans with J. B. Slawson	309	175
Contract, City of New Orleans with J. B. Slawson	316	176
Contract, City of New Orleans with J. B. Slawson	322	184
Change of contract on sundry streets	324	186
Act substituting N. O. City R. R. Co. to rights of Slawson *et al.*	327	188
Contract, City of New Orleans with N. O. City R. R. Co.	330	190
Resolutions and ordinances	335	195
Right of passage, Chas. Caffin to N. O. City R. R. Co.	344	203
Amendatory contract with City of New Orleans	346	204
Grant from City of New Orleans	348	206
Contract with St. Charles Street R. R. Co.	350	207
Ordinances and contracts relating to Lake R. R.	354	210
Lease of portion of Greenwood Cemetery	357	213
Agreement with City of New Orleans	362	216
Ordinances	364	218
Articles of consolidation with N. O., Metairie & Lake R. R. Co.	365	218
Act to incorporate N. O., Metairie & Lake R. R. Co.	369	221
Contract with City of New Orleans for Prytania-street extension	372	223
Ordinance No. 217	382	231
Contract with City of New Orleans for Magazine-street extension	383	231
Sundry grants from City of New Orleans	395	240

	Original.	Print.
Mortgage, N. O. City R. R. Co. to Walker	397	241
Contract providing for payment of bonds, &c.	409	249
General ordinances	412	251
Index	417	254
Errata	419	256
Transcript filed	420	256
Motion for time and certificate	421	256
Motion for time and order	422	257
Cause submitted	422	257
Reasons for judgment	423	258
Judgment and decree	427	260
Petition for rehearing	427	260
Motion for time and order	429	261
Motion for time and order	430	261
Rehearing refused	431	262
Petition for writ of error	431	262
Affidavit to petition	433	263
Order granting writ of error	433	263
Letter of Maj. B. M. Harrod to Mr. S. L. Gilmore, May 31, 1890	435	264
Petition for writ of error to chief justice of Louisiana	436	265
Bond for supersedeas	438	266
Bond on writ of error	439	267
Order refusing to approve bond as supersedeas	442	268
Petition for writ of error, with supersedeas, to Hon. L. Q. C. Lamar	443	268
Order granting supersedeas	448	271
Bond on supersedeas	449	271
Order approving bond on supersedeas	450	272
Testimony of sureties on bond	453	273
Testimony of R. M. O'Brien	454	273
H. Gally	457	275
E. J. Demorest	458	275
H. Gally (recalled)	461	277
Jos. A. Walker	461	277
Charles F. Buck	467	280
Exhibits	470	282
Joseph A. Walker	473	284
H. Gally	473	284
Charles F. Buck	474	284
R. M. O'Brien	475	285
E. J. Demorest	475	285
Clerk's certificate	476	285
Chief justice's certificate	476	286
Original writ of error	477	286
Original citation	480	287

1 No. 10514.

Supreme Court of Louisiana.

Filed January 15th, 1890.
(Signed) LAURENT M. MARTIN,
Deputy Clerk.

STATE OF LOUISIANA,
Parish of Orleans, City of N. O.

Civil District Court for the Parish of Orleans.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. } No. 27049.

Samuel L. Gilmore, Esq., assistant city attorney, for City of New Orleans and appellee; Messrs. Buck, Dinkelspiel and Hart, attorneys for defendants and appellants.

Transcript of Appeal, Returnable to the Honorable the Supreme Court of Louisiana on the First Monday of January, 1890.

2 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. } No. 7049. Civil District Court, Division "B."

Petition for Mandamus. Filed May 21st, 1889.

To the honorable the civil district court, parish of Orleans:

The petition of the State of Louisiana on the relation of the City of New Orleans, a municipal corporation of this State, organized under act No. 20 of the General Assembly of Louisiana, approved June 23d, 1882, with respect represents—

That the New Orleans City and Lake Railroad Company, a corporation organized under the laws of this State and having its domicile in this city, is now operating, under certain contracts made by it with relator and under certain contracts made with the relator by the New Orleans City railroad, whose successor it is and whose rights it acquired and whose obligations it assumed by its charter and by act of sale passed before "W. O. Hart" on the 9th day of June, 1883, various lines of street railways in this city, to wit, the Levee and Barracks line, under contract made by public act before C. E. Fortier, late notary, dated June 9th, 1862, in accordance with ordinances Nos. "6033" and "6053," old series, and amended by

ordinances Nos. "6322" and "6405," old series, and under and by virtue of ordinance No. 1682, A. S.

3 The "Camp and Prytania," "Camp and Magazine," "Rampart and Dauphine," Canal street, Metarie road, and Bayou St. John and the "Esplanade and Bayou Bridge" lines, under contract made by act before G. Legardeur, notary, dated 2nd Oct., 1879, in accordance with ordinances Nos. "4968," "5020," and "6148," A. S., an omission being supplied by ordinance No. "7127," A. S., adopted May 31st, 1881, and by virtue of ordinance No. 7725, A. S.; No. 523, C. S., and No. 807, C. S.

The New Orleans City and Lake railroad line, under and by virtue of an act of consolidation of the New Orleans City Railroad Company with the New Orleans, Metarie and Lake Railroad Company, dated 21st December, 1875, of a contract with petitioner passed before G. Legardeure, notary, on 1st July, 1878, and of ordinances of the city of New Orleans, No. 3565, adopted June 13th, 1876; No. 3617, adopted August 22nd, 1876; No. 6528, adopted June 15th, 1880; No. 6891, adopted March 3d, 1881; No. 541, council series, adopted 4th January, 1884.

The extension of the Camp and Prytania line under contract made by act before Jos. D. Taylor, notary, dated 27th February, 1883, in accordance with ordinance No. 54, council series, and under and by virtue of ordinance No. 54, council series; the extension of the Camp and Magazine line under contract made by act before Jos. D. Taylor, notary, dated 13th May, 1883, in accordance with ordinances Nos. 248 and 276, council series; all of which said contracts, acts, and ordinances, together with all other contracts, acts, and ordinances bearing on the same subject-matter and not herein specially recited or mentioned, are made part of this petition.

That under the terms of said contracts, acts, and ordinances whereby it is operating the Levee and Barracks, Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal street, Metarie road and Bayou St. John, the Esplanade and Bayou Bridge lines, and the steam railway to the lake, said New Orleans City and Lake Railroad Company is bound and obligated, among other things,

4 to keep the paved and unpaved streets through which its tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb during the continuance of its franchise and right of way; to raise, repair, and repave any and all intersections of streets when required by relator upon lines and levels to be furnished by the city surveyor; to widen and deepen any and all culverts and sluices to such dimensions as may be required and directed by the city surveyor; to keep in repair all bridges and to make new ones when required by relator on all streets through which its lines pass; to pave on all unpaved streets through — its lines pass the lines of said tracks within the rails with either round stones or with four by five inch scantling in the best workmanlike manner, and to plank the space between the lines of the track and the gutters of the streets with yellow pine planks three inches thick laid on stringers four inches thick by eight inches wide, and to use flat rails for its tracks,

and to keep its tracks in repair and good condition; that by the terms of the said contracts, acts, and ordinances under which it — operating the extension of the Camp and Prytania line and the extension of the Camp and Magazine line the said New Orleans City and Lake Railroad Company is bound and obligated, among other things, to construct all crossings, bridges, and culverts and wings of the same on the streets through which its tracks pass which, in the opinion of the commissioner of public works and the city surveyor, are at any time needed, and to keep the said streets between the banquette curb lines, including all plankings, crossings, bridges, culverts, and wings of same, and also all the intersections of the streets of this route, at all times in good roadway order and condition; to use flat rails, five (5) inches, resting on suitable change at their ends, as well spiked with six (6) inch wrought-iron spikes; to transversely plank the entire space between the rails and tracks with 3 by 12 inches milled pine, and to place along the two outer
5 sides of the tramways throughout this route close to the stringers and on a level with the top of the rail one plank not less than 3 by 12 inches in dimension, and to keep its tracks in good order and condition.

That, in violation of its said obligations, the said New Orleans City and Lake Railroad Company, although thereunto often requested, neglects and refuses to keep the streets through which its tracks pass in good order and condition, to repair and keep in good condition the bridges and intersections on said streets, to provide the proper drainage and to build and keep in repair the proper culverts, to use the flat rails, to plank upon unpaved streets referred to in said contracts the space between the lines of the tracks and the gutters of the streets as required by said contracts, and to place the 3 by 12 inches plank level with the top of the rails on the streets referred to in said contracts where there are double tracks or to keep in repair such planking where it has been placed on the streets referred to in said contracts where there are single tracks, and has in many other divers ways violated its contracts with relator and the law, all of which will more fully and at large appear from the report of the city surveyor and the further bill of particulars which is hereunto annexed and made part hereof.

Relator further avers that it is the absolute duty of said New Orleans City and Lake Railroad Company to immediately comply with all its obligations, and that relator by express provision of law is entitled to the issuance of a writ of mandamus to compel such compliance.

Wherefore, the annexed affidavit being considered, relator prays that a writ of mandamus issue herein in the alternative, addressed to the New Orleans City and Lake Railroad Company, through its president, Jos. A. Walker, or other proper officer or officers,
6 directing and commanding it to show cause, on the — day of ——, 1889, at 11 o'clock a. m., why it should not specially perform all the matters and things recited herein and in the report of the city surveyor and the further bills of particulars hereunto annexed as necessary to be done, and all matters and things which

under its contracts and by law it is obligated to do, and that, after due proceedings had, there be judgment in favor of your petitioner making said writ of mandamus peremptory, and for costs and for general relief.

(Signed) SAMUEL L. GILMORE,
Assistant City Attorney.

Affidavit.

Personally appeared Honorable Jos. A. Shakespeare, who, being by me duly sworn, deposes and says that the facts stated in the foregoing petition are true.

(Signed) JOS. A. SHAKSPEARE, *Mayor.*

Sworn to and subscribed before me this 21st day of May, 1889.

(Signed) L. H. SHIELDS, *Not. Pub.*

Order.

Let an alternative writ of mandamus issue as herein prayed for and according to law, returnable on Friday, the 31st of May, 1889, at eleven o'clock a. m.

New Orleans, May 23rd, 1889.

(Signed) FRED. D. KING, *Judge.*

EXHIBIT ATTACHED TO PETITION. Filed May 21st, 1889.

SURVEYOR'S OFFICE, ROOM NO. 19, CITY HALL,
7 NEW ORLEANS, *April 27th*, 1889.

Hon. J. G. Clark.

SIR: In compliance with the request of your committee, dated Ap. 6th, I have the honor to submit the following report on the condition of the lines of the City and Lake R. R. Company:

"Levee and Barracks line."

The ordinances referring to the maintenance of this line are found in Jewel's Digest, 1887, pp. 230, 231, and 232, arts. 232, 234, and 244.

The iron bridge on Peters and Levee streets at the intersection of Conti and St. Louis streets and in some other places need repairs.

On the unpaved streets the space between the lines of the tracks and the gutters of the streets are not planked, as required. On Dauphine street between Poland a T rail instead of the required pattern is used. I consider that the drainage across Dauphine street below Poland is insufficient, and should be increased by straightening and enlarging the present culverts and building additional ones.

Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal street, Metarie Road and Bayou St. John, Esplanade and Bayou Bridge lines.

The ordinances referring to the maintenance of these lines are found in Jewel's Digest, p. 236, art. 252 (a, b, c, and d).

Camp and Prytania.

The plank road in the block below Toledano is in very bad order. On the unpaved streets "the space between the lines of the tracks and the gutters of the street" are not planked, as required.

8 Camp and Magazine.

The plank road at the upper end of the line on Magazine street is in bad order and needs repairs.

Rampart and Dauphine.

Both bridges at the intersection of Dauphine and Marigny Str. need repairs; also one bridge at Mandeville street.

The planking between the double tracks on Dauphine below Poland street is in very bad order. This condition, with the T rail there used, makes an exceedingly bad road for vehicles. The road on either side of the single track on Dauphine below Caffin's lane is in bad condition, and also Delery street from Dauphine street to the river, the road in both cases being so much worn down that it is difficult and dangerous in many places to cross the track.

The facts of the absence of planking on the sides, of the use of T instead of a flat rail, and the want of drainage on the lower part of this line have been noted in connection with the Levee and Barracks lines.

"Canal, Metarie road, and Bayou St. John."

On the Metarie road the planking between tracks and rails is in bad order, and there is no planking between the lines of tracks and the gutters of the street.

Esplanade and Bayou bridge.

No sufficient work has been done on the unpaved parts of this street in planking it or in keeping it in good order from curb to curb.

New Orleans City and Lake Railroad line.

The ordinances referring to the maintenance of this line are found in Jewel's Digest, 1887, pp. 240, 241, arts. 272, 278.

No sufficient work has been done by the company to keep the roadways on Canal street in good order.

Extension of Camp and Prytania.

The ordinances referring to the maintenace of this line are found in Jewel's Digest, 1887, pp. 283 (d) & 284.

9 On this line there are intersections in need of repairs at "Bordeaux," "Peters," and "Octavia" streets, on the up track, and at "Aline," "Delachaise," "Amelia, "Lower Napoleon," and "Joseph," on the down track. There are bad bridges at Amelia and Milan, on the down track.

The single tracks from "Soniat" to "Joseph" streets are not in good "roadway order," as the crown of the road-bed is only about eight feet wide, with a steep and high slope on either side, making it impracticable for vehicles to pass.

The required "3 by twelve (12) plank, level with the top of rails," are not placed where there are double tracks. Where there are single tracks they are in some places entirely worn out and in others in bad order.

Additional drainage is needed under the tracks of this line in many places.

Camp and Magazine extension.

The ordinances referring to the maintenance of this line are found in "Jewel's Digest," 1887, pp. 246, 247, arts. 295 (d) and 296.

Intersections on this line need repairs on the down track at "Peters," "Bellecastle," "Lyon," and "Lower Napoleon" streets, and also at "Nashville avenue" and "Soniat" and "Bellecastle" streets, on the up track.

The required "3 by 12" plank, level with the top of the rails, are not placed where there are double tracks. Where there are single tracks they are in some places entirely worn out and in others in bad order. Additional drainage is needed under the tracks of this line in many places.

Respectfully,

B. M. HARROD,

10 "*City Surveyor, New Orleans.*"

J. G. CLARK, *Chairman.*
CHAS. F. CLAIBORNE.
A. BRITTIN.
J. B. WOODS.
J. R. S. SELLECK.

Dictated.

In addition to the requirements named by the city surveyor the following are given:

The general bad condition of the pavement upon Magazine street.

The abandoned track on Poeyfarre street and the bad condition of the old curves leading to that track, which have never been taken up and street placed in good condition.

The rough condition of the crossing at "St. Joseph," "Jackson," and other streets.

The rough condition and bad workmanship of nearly all the curves belonging to the various tracks of said railroad company.

The general dilapidated and unkept condition of the rolling stock, which in many instances is unfit to be in service and such as no company should furnish the patrons of their roads.

The general shabby condition of most of the car-drivers, who present an untidy appearance, in perfect keeping with the rolling stock and showing the entire absence of that degree of cleanliness and management exercised in every city outside of our own.

It should be well understood that every R. R. Co. is obligated to so conduct their contracts that all cars and employees shall present a perfect condition and appearance, and it should be the duty of the city authorities to enforce such in the interest of the people.

11 STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.
No. 2749.
Civil District Court, Division "B."

Exception and Answer. Filed June 14th, 1889.

To the honorable the civil district court for the parish of Orleans:

And now in this honorable court, through undersigned counsel, appears the defendant, and for return to the rule to show cause why the alternative writ of mandamus herein issued should not be made peremptory shows and pleads as follows, to wit:

1st. Defendant excepts to relator's petition on the ground that it discloses no lawful cause of action.

2nd. That the relief sought cannot be had by means of the harsh writ of mandamus, which is an unusual and extraordinary remedy, authorized and permitted only under clear and explicit provisions of the law.

3rd. The rights and obligations and remedies in the regard assumed by the parties to the contract of October 2nd, 1879, out of which proceedings grow, must be regulated and interpreted according to the laws in force at the time, and under the terms of said contract, which is made part of this return, and the laws then in force relator is not entitled to the relief sought.

4th. If it be contended by relator that this proceeding is authorized and made in accordance with the provisions of a certain act of the General Assembly of Louisiana, being article No. 133 of the acts of the session of 1888 thereof, entitled "An act providing a summary remedy against corporations," &c., &c., then this appearer pleads and sets up—

12 1st. That said act No. 133 of the acts of 1888, &c., is null and void, undoubtedly, as in violation of the constitution of the State of Louisiana, particularly articles 11, 46, and 48 thereof.

It violates article 11 because it purports to take defendant's property without "due process of law."

It violates article 46, in this, that it is a special law, the purpose and effect of which is to provide and change "the method for collection of debts or enforcing judgments in a particular class of cases, which is expressly prohibited by said article 46. If not a special law expressly prohibited by said article 46, it is a special law in the sense of article 46 of said constitution, and notice of intention to pass such law should have been given and the fact recited in the body of the act, which was not done.

2nd. Even if constitutional—that is to say, valid and operative under the laws and constitution of this State—the law can have no retroactive effect to change or affect the rights of the parties to contracts entered into prior to its passage.

To attribute such effect to this act as operative upon this appearer would impair the obligations of the contract aforesaid, in violation of article 1, sec. 10, No. 1, of the Constitution of the United States, and article 1, sec. 9, No. 3, of the same, which are expressly pleaded and invoked in protection of its rights under the contract in the premises.

5th. And for further special plea and exception, if the foregoing be overruled, defendant pleads and avers that there was no proper and legal demand or putting in default, as required by the contract and the laws applicable thereto, and that without allegation and proof of such default this action cannot be maintained.

13 6th. And, reserving the foregoing exceptions and special defences, for further exception respondent pleads that the allegations of the petition, together with the pretended statement or exhibit of repairs necessary, annexed thereto and made part thereof, are too vague, general, and indefinite to enable this defendant to properly plead thereto.

This suit, for the purposes therein sought to be accomplished, cannot be maintained upon such vague, general, and indefinite allegations; but the violations of contract in any and the neglect on the part of the defendant company to fulfill the same should in each and every separate and specific instance be specially and accurately set forth, without which it is impossible for this appearer to make proper defence.

And excepts further specifically that this action is premature, and that this company was not properly notified, as required by contract; that under its contracts with the city of New Orleans, which are made the basis of relator's action herein, it is stipulated that all repairs to streets, bridges, &c., which under its contract this respondent is bound to make, should and shall be made under the supervision and on the demand and notice of the commissioner of public works, and respondent specially sets up that no demand or notification according to said contract has ever been made upon or given to it to do any of the work or repairs mentioned in relator's petition.

Respondent, reserving all of the foregoing for answer to relator's petition, except as may have been herein admitted or as may hereinafter be admitted, denies specially and generally all and singular the allegations in relator's petition contained. It specially denies that it has been properly notified, and avers that it has at all times complied with all its just obligations and duties and with all

14 demands for repairs or improvements made upon it in accordance with terms of its contract, and is now and always has been regularly and constantly keeping its tracks, with the bridges and roads through which same pass, in proper condition and repair and will continue so to do.

Wherefore respondent prays that relator's suit be dismissed with costs, and for general relief.

(Signed) BUCK, DINKLESPEIL AND HART.

Affidavit.

The undersigned, duly sworn, deposes and says that he is president of the company defendant herein, and that all and singular the facts and allegations in the foregoing answer are true and correct.

(Signed) J. A. WALKER, *President.*

Sworn and subscribed to before me this 14th day of June, A. D. 1889.

(Signed) E. H. McCALEB, *D'y Cl'k.*

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.

No. 27047.
Civil District Court, Division "B."

Testimony Taken in Open Court by Expert Selected by Counsel for All Parties Monday, July 1st, 1889. Filed November 14th, 1889.

Appearances: Hon. Carleton Hunt, Hon. S. L. Gilmore, for plaintiff; Hon. C. F. Buck, for defendant.

By Mr. GILMORE: I offer pamphlet entitled "Charter and
15 By-Laws of the New Orleans City and Lake Railroad Company," together with the city ordinances and contracts relating to the same, dated 1883.

By Mr. BUCK: I object to the introduction of this evidence, and, in fact, to the introduction of any and all evidence on the part of relator in this case on the grounds—

1. That the relator's petition discloses no lawful cause of action for the relief sought by him.

2. That the allegations of the petition, together with the documents annexed thereto—the pretended statement of repairs required—are too vague and indefinite and not sufficiently specific to enable this defendant to properly go to trial on this issue, an exception which from the nature of the proceeding could not be separately disposed of, and counsel for defendant desires to avail himself of it in this form.

3. That there is no allegation in this petition that the defendant has been put properly in default, and that no action of this character can be maintained without an allegation and proof of the defendant having been put in default.

By the COURT: The court considers that the petition is sufficiently plain and specific to place the defendant upon its guard and to give it ample opportunity to answer. The question as to whether or not the defendant has been put in default and allegation in the petition the court considers sufficient to admit the evidence, but whether or not the defendants have been properly placed in default is a question to be decided by the court after the evidence is admitted, and therefore the objections made go to the effect of the evidence and not to its admissibility.

By Mr. GILMORE: It is agreed between counsel that this pamphlet shall be full proof of all contracts, ordinances, and reso-
16 lutions therein contained without the production of any of the original ordinances and resolutions, and that in case of an appeal to the Supreme Court in this case that it may be used in the appellate court without being copied in the transcript.

By Mr. BUCK: I wish to ask your honor to add to the ruling that so much to the objection to the admissibility of the testimony as is based on the assertion that the petition discloses no cause of action is reserved until the final disposition of the case.

By the COURT: Yes; let it so appear.

By Mr. GILMORE: I offer, introduce, and file in evidence city ordinances 248, C. S.; 541, C. S.; 523, C. S.; 600, C. S.

Also the report of the special committee of the city council on contracts reported to the council, dated May, 1889, duly certified copies of the ordinances named being produced.

By Mr. BUCK: I object to this last report of the special committee, it being no evidence against us.

By the COURT: I think that it is admissible for proof of authority to bring suit, but not admissible to prove anything else.

By Mr. GILMORE: I offer all other ordinances, contracts, or resolutions on the subject-matter of this suit as reported, and it is agreed that they be cited from Jewel's Digest as if the book was in evidence, edition of 1887, and that in case of appeal this book may be used in original.

Mr. A. BRITTIN, sworn on behalf of plaintiff, says:

By Mr. GILMORE:

Q. Mr. Brittin, you are a member of the city council?

A. Yes, sir.

Q. You are a member of the special committee on railway contracts and franchises?

17 A. Yes, sir; I am.

Q. Do you know if at any time or at any meeting of that committee any of the officers of the New Orleans City and Lake Railway Company were summoned and appeared?

A. Yes, sir.

Q. Who was the officer who was present?

A. Mr. Walker was summoned.

Q. The president of the company?

A. Yes, sir.

Q. Do you know what took place at that meeting?

A. Well, yes; I do. *Q.* Mr. Walker was present, and Mr. Wintz, superintendent, accompanied by Mr. Buck, their attorney. You want me to state about the meeting?

Q. Yes.

A. Mr. Walker was summoned and represented his railroad with reference to the defaults that they were in to the city (so said to the council committee), and brought there for the purpose of adjusting those difficulties, if they could be amicably, of course. When these

gentlemen presented themselves, through Mr. Walker, their president, they had quite an interview with us. We began by saying to the gentlemen that we were instructed by the city council to take the necessary steps in order to have all of the railroad and other corporations comply with the obligations imposed by their franchises, and were at them for some time for that purpose with reference specially to the New Orleans City and Lake Railroad Company. We then mentioned to them that they were in default to the city for the non-performance of work specified in their franchise, and we called their attention to such work as had not been complied with. They seemed to admit or at all events did not deny that some part of this work had not been done, but as an offset they claimed that the city had impaired their franchise rights by subsequently passing other acts, and had imposed obligations upon them that were injurious to their company, and we found after a good deal of consultation on the subject that they urged that point so strongly that I, as a member of that committee, said to them or asked them the question if they put that in as entire set-off to all their obligations that they had not fulfilled to the city, and they said that they did. Mr. Walker answered, also Mr. Buck, for them. After that statement we said to them it would be unnecessary to prolong the interview. We previously mentioned that it would be desirable on the part of the city to adjust these difficulties, if they could be, amicably or by compromise, but as they claimed that the injury to their railroad had been equal to their default to the city they were quite unwilling to entering into arrangements, and we made the statement that the only recourse would be to the law, and we parted on that basis.

18

Q. Did they not admit, Mr. Brittin, that they had been previously requested to do these things?

By Mr. BUCK: I object. It is leading.

Objection maintained.

By Mr. GILMORE:

Q. Was there anything else said or done; was the whole talk about offset?

A. No, sir. We had quite a lengthy talk on the subject desultory in its character. They seemed to be aware of the fact that these claims had been made. I don't know that they made the admission that they had been directly, or that a demand had been directly made upon them, but they seemed to understand that these defaults had been put upon them.

Q. Did any controversy arise between the committee and the railroad company about any putting in default or anything of that kind?

A. No, sir.

19

Q. Read that, Mr. Brittin, and state to the court whether that is the report of the committee.

A. Yes, sir; that is the report of the committee.

By Mr. GILMORE: I offer the report now.

By Mr. BUCK: I will object, as I do not think that it is legal evidence.

By Mr. HUNT:

Q. Mr. Brittin, were these sessions protracted? Were these sessions investigating the charges against the railroad companies protracted?

A. Yes, sir; they extended over a term of several weeks.

Q. My object in asking that is to ascertain whether they covered a full investigation of the topics assigned.

A. We did not propose, when the company claimed—when this special company—at that interview the fact or they stated that the city had trespassed upon their rights that we could go further in the details, and we then remitted the question as to what their default was to the city surveyor for report as to the specific statement, and that report was made, and then on the final report of the city surveyor this report was made.

Q. Do I understand you to say that they took the ground that their obligations were cancelled?

A. Yes, sir; exactly.

Q. That their obligations under their contract were cancelled?

A. Yes, sir; cancelled.

Q. You mean to say that they gave that to be their conclusion?

A. That is to say, that the injury wrought their road was to an extent coequal with the obligations imposed upon them by their franchise.

Q. You mean to say that they claimed that they would not execute their contract?

20 A. Yes, sir.

By the COURT: In regard to the report offered in evidence it seems to the court to be conclusions arrived at by a committee of the city council as to whether or not this road had complied with their obligations. The court considers that this is the question before the court now, and that this is not proper evidence. Whatsoever conclusions the committee of the city council may have come to upon investigating this road is not binding upon this court and is not the best evidence. As to that portion of it referring to the city attorney to bring this suit I am not aware that the city attorney's authority is questioned, and therefore the objection is well taken and is sustained and the report is excluded.

By Mr. HUNT: Well, Mr. Brittin, you say that this inquiry was an extended one?

A. Yes, sir.

Q. It covered the whole subject assigned to the committee?

A. Yes, sir.

Q. What were the subjects that they were to investigate?

A. The defaults with reference to all corporations in the city having contracts with us.

Q. And the position of the city railroad was what before the committee? They were represented by whom?

A. By their president.

Q. And by their counsel?

A. Yes, sir; Mr. Buck and the superintendent, Mr. Wintz.

Q. And the position of the city railroad company was what, if you please?

A. That they may be in default to the city with reference to the non-fulfilment of their obligations; that the city, by virtue of a franchise granted to another company and for other reasons, had injured their road to the extent which in amount would be quite coequal with the extent of their default to the city.

21 Q. As I understand you, they took the position that by the granting of the other franchise of the city——

By Mr. BUCK: I object.

By Mr. HUNT:

Q. What position did they take as to the alleged granting by the city to other corporations of the franchises of which you speak?

A. Well, one of the objections which they pleaded was the franchises granted to the Coliseum Street Railroad Company—the "Snake line" as it is called.

Q. What was that?

A. That was on allowing of that railroad to pass through Camp street. I do not know whether—I took the ground. I said to the committee that that question had already been remitted to the court and it had been decided that the city had the right to sell that franchise. They argued other injuries to their road besides that, I think. I think that the statement was made also as to the heavy traffic.

Q. I want to prove, if you please, by you, Mr. Brittin, what exact alleged violation they complained of.

A. That was one of them, and the principal injury that they seemed to sustain, although they alleged others, I think—injury to their tracks by reason of very heavy traffic.

Q. What were the other causes alleged?

A. I think that was the other and principal cause—the Coliseum-street franchise and the injury to their tracks by traffic.

Q. What did those gentlemen say was the effect of that alleged violation of their franchise and their existing contract? What position did they take?

A. That they had been injured by the city to the extent—well, quite coequal with any default upon their part in the performance of their obligations as imposed by their franchise rights.

22 Cross-examination by Mr. BUCK:

Q. Do you remember whether Mr. Walker and myself stated that I was there in the capacity of a director of that road and not as its attorney?

A. You may have so stated. My memory is not clear on the subject.

Q. It may not make any difference, but I so stated to the committee.

A. I will state to the court that the interview was of a quite pleasant character. There was no bitterness on either side.

Q. You said in the early part of your testimony that the matter of compromise was spoken of, but nothing was arrived at.

A. Yes, sir.

Q. "Compromise" would seem to imply offer and counter-offer?

A. Yes, sir.

Q. You have corrected that impression by saying that the city did not admit any claim whatsoever for damages for violation of contract which the railroad urged?

A. I don't know that any admissions were asked of the city. I remember that I stated that we would be glad to adjust these difficulties on an equitable basis.

Q. Did your committee make any offer to recognize any claim whatsoever on the part of the city railroad company for damages by reasons of violations of contract which they claimed?

A. None, except by offer of this general statement, which I remember to have made myself. I remember stating that we would be glad to adjust the difficulty on equitable basis if we could arrive at it.

Q. Now, as to the statement in reference to the company not doing anything because it considered that it had been damaged to the extent of a complete offset, &c., is it not your recollection that
23 the company did not admit that it was *any* in any manner in default as to the general condition of its tracks, and that the company did not admit that it was in default as to the planking of the mud streets, but was ready at any time to make the repairs, and that the only issue narrowed itself down to the question as to the advisability of planking the mud streets?

A. I won't say.

Q. That was substantially the whole of it, so far as our admission was concerned?

A. Yes, sir; so far as your admission was concerned.

Q. Was the principal matter in regard to Camp street?

A. Yes, sir; you claimed serious injury on account of that.

Q. You know the fact that there is such a railroad operating on Canal street other than the New Orleans City and Lake R. R. Company?

A. Yes, sir.

Q. Running its tracks very near the Magazine railroad down to Clio or Calliope street?

A. Yes, sir.

—. And going uptown on Camp and thereon — Coliseum street?

A. Yes, sir.

Q. On one side the tracks goes up Camp and then on the side of Coliseum square towards the woods and down Camp street?

A. Yes, sir; for a short distance.

Q. Did your committee or any one connected with the investigation demand or urge that there had been a demand made upon the

city R. R. company at any time to plank the mud streets or any portion of the mud streets that remained unplanked?

A. I could not say, except in a general sense. I remember to have stated that frequent complaints had been made with regard to this railroad and other railroads, and for that purpose we had sought this interview.

Q. In reference to that subject, on the contrary, was not the disposition—of course I don't know that it is a legal
24 —, but I wish to get at the fact because the question involved here is one of fact, one of admission—is it not a fact that your committee, whether by note or otherwise, or all parties connected, rather, were of the impression that wooden planking was not desirable, and that was not enforced because not desirable and, rather, held to be contrary to good health?

A. I would not say that exactly.

Q. But something of that character?

A. I cannot say that. I can say this, speaking for myself and, I believe, for the committee, that we have been disinclined to put down plank road and substitute some other kind of road, but no proposition of that character was made.

Q. Any proposition of that character agitated between the city and railroad company?

A. No, sir; that I did know. We have now a plan in course of construction with another railroad company in course of perfection bearing on that subject.

Q. That I wish to put distinctly on record, because I do not wish the company to be placed in a false light, and that the company did not repudiate its obligations in toto at that meeting, but declared to the committee that the damages which it sustained were such that the company was not prepared——

A. The impression left on my mind was the company conceded its obligations to the city, but claimed this offset against it. I think that the company made no denial of that.

Q. Did not the representative of the company state in every particular all of the obligations, so far as the streets, tracks, etc., were carried out, and that they were in good order, and that they were ready at any time to keep them in order?

A. Yes, sir.

Q. And that they would satisfy any proper demand made upon them?

A. I won't go to that extreme, but my impression is that
25 they claimed that they carried out every demand made upon them.

By Mr. GILMORE: I offer, introduce, and file in evidence letter, dated May, 1878, from "Gen'l Beauregard," commissioner of improvements, to the railroad companies, and which reads as follows:

MAY 18TH, 1878.

DEAR SIR: You are notified hereby to immediately commence and without delay complete all the repairs necessary to all the streets and

gutters from curb to curb; to clean thoroughly all ditches, culverts, pipes, or gutters beneath the bridges over which or near which your tracks are laid, and to repair all bridges now in bad condition under or near your tracks the lengths of your line of road, in accordance with the charter and ordinances governing the building and continuation of your road. This department will not be able to do the work expected of it under the most auspicious conditions unless your road is conducted in strict regard to the conditions of repairs and improvements imposed upon it by the charter under which it exists. By complying with the express wishes of this department as herein mentioned immediately you will aid in bringing the streets of the city to something like a good condition and assist in reducing the accumulated filth to a minimum.

Very respectfully,

——— ———,
Commissioner.

The letter is not signed, but was from the then commissioner of public works, and is read from the letter-press copy books.

By Mr. BUCK: I admit the letter for the purpose of showing that such a letter was served, but I do not admit that it constitutes
26 the specific demand upon which this account is based.

"Admission."—It is admitted that General Beauregard ceased to be commissioner of improvements on the 10th day of August, 1888, and that Col. Charles J. Villere was acting commissioner for some time prior thereto.

Hon. B. M. HARROD, sworn for plaintiff, says:

By Mr. GILMORE:

Q. Are you familiar with the lines, road, tracks, etc., of the New Orleans City and Lake Railroad Company and the condition of the streets through which those tracks pass?

A. Yes, sir.

Q. Have you made any investigation of the condition of the streets and railroad tracks in order to determine whether the same are in the condition required by the ordinance?

A. Yes, sir.

Q. When did you make that investigation?

A. The last one that I made was at the date of that paper, in April.

Q. April 27th?

A. Yes, sir; and I made other and partial ones before that. This was the last and most complete.

Q. Major, will you just state to the court what your findings are in relation to the company—in relation to the conditions of the streets and tracks of this company?

By Mr. BUCK: I object to any general evidence, if your honor please.

Objection maintained.

27 By Mr. GILMORE:

Q. This is your report?

A. Yes, sir.

By Mr. GILMORE: I offer the report in evidence.

By Mr. BUCK: I object to its admission except for the purpose of showing "*rem ipsem.*"

Objection maintained.

By Mr. GILMORE:

Q. What is the condition of the Levee and Barracks line, which is one of the lines belonging to this company in the neighborhood of Peters and Levee streets?

By Mr. BUCK: I object to the question as to the condition of that particular line of railroad on the ground that the general condition of the railroad is not the matter at issue between the parties; that the contract upon which this suit was brought stipulates only certain repairs which the defendant is bound to make to crossings, bridges, and repairs to certain portions of the streets, and that therefore we are limited in our inquiry to the conditions of crossings, bridges, and such things as the company under this contract is bound to repair and not the general condition of the road.

By the COURT: The court considers that the objection goes to the effect.

By Mr. GILMORE:

Q. Major, the iron bridges on Peters and Levee streets, on the Levee and Barracks line, at the intersection of Conti and St. Louis streets—in what condition are they—are they in need of repairs?

28 A. I think that in one of those cases the bridge plate was cracked. The main defect was the settlement of the bridge down below the general grade of the square block paving of the street.

Q. They need repairs at those places?

A. Yes, sir.

Q. What is the nature of the repairs needed there?

A. Replacing one or more of the iron plates that are broken and raising up the grade of — or two of the streets. The iron bridges on Peters and Levee street-, at the intersection of Conti and St. Louis and in some other places, need repairs.

By Mr. BUCK:

Q. Did you make this examination yourself or through your assistants?

A. Those that are reported and here I made in person.

Q. In person?

A. Yes, sir.

On the unpaved streets the space between the lines of the tracks and the gutters are not planked as required. On Dauphine street, Poland, the "T" rail instead of the regular pattern is used. The

drainage across Dauphine street below Poland is insufficient and should be increased by straightening and enlarging the present culverts and building additional ones.

Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal streets, and Metarie road and Bayou St. John, and Esplanade street and Bayou bridge.

On Camp and Prytania.

The plank road on the block below Toledano is in very bad order. On the unpaved streets the space between the lines of the tracks and the gutters of the streets are not planked as required.

Camp and Magazine line.

The plank road at the upper end of this line on Magazine
29 str. is in bad order, needing repairs.

Rampart and Dauphine.

Both bridges at the intersection of Dauphine and Marigny strs. need repair; also one bridge on Mandeville street. The planking between the double tracks on Dauphine street below Poland str. is in very bad order. This condition with the "T" rail there used makes it an exceedingly bad road for vehicles. The road on either side of the single track on Dauphine street below Caffin's lane is in very bad order; also Delery from Dauphine str. to the river, the road in both cases being so much worn down that it is difficult and dangerous in many places to cross the track—that is, for vehicles.

The facts of the absence of planking on the sides and the use of the "T" rail instead of the flat rail and the want of drainage on the lower part of this line have been noted in connection with the Levee and Barracks line.

Can'l street, Metarie road, and Bayou St. John.

On Metarie road the planking between the tracks and rails is in bad order, and there is no planking between the lines of the tracks and the streets.

Esplanade and Bayou bridge.

No sufficient work has been done on the unpaved part of this street, in planking it or in keeping it in good order from curb to curb.

New Orleans City and Lake road.

No sufficient work has been done by the company to keep the roadways on Canal street in good order.

Extension of Camp and Prytania streets.

On this line there are intersections in need of repair at Bordeaux, Peters avenue, and Octavia streets on the up track, and Aline,

Delachaise, Amelia, Lower Napoleon, and Joseph streets on the down tracks.

There are bad bridges on at Amelia and Milan on the
30 down track. The single tracks from Soniat to Joseph street are not in good roadway order, as the crown of the road-bed is only about eight feet wide, with a steep and high slope on either side, making it impracticable for vehicles to pass.

By Mr. BUCK:

Q. Was there any street there at all when this road was built, on that portion which you speak of, except this narrow ground?

A. The street was opened, but that part of it passed through a swamp or marsh. It was overflowed at times in bad weather and altogether impassable, but in good weather probably passable.

Q. What is the width of the street as laid down on the map?

A. I think it was about a fifty-foot street.

—. Has the city ever laid that street and constructed it and made it a street except such as it was when the city railroad built their tracks upon it?

A. I could not tell you. I was not familiar with the street.

Q. It goes through a very low marsh?

A. Yes, sir.

Q. The railroad bed is from four to six feet high?

A. No, sir; about three feet high. My impression is that before the road was built it was passable, and at other times impassable, according to the weather, and it is now impassable at all times, because the road-bed is eighteen feet wide, but no vehicle could go over it.

Q. They could go on the track, but there is not space enough to pass the car—that is, for a short distance, of a square?

A. Well, where the double-track road separates I believe it's for about 5 or 6 blocks on the up track and as much on a different street from the down track.

31 Q. Are there any inhabitants along there?

A. It's not settled.

Q. In fact, it's not settled at all after upper line?

A. No, sir; it is not built up. I think that there are three or four blocks, at least, without a house.

By Mr. GILMORE:

Q. Major, the road is built there, as it were, on a levee?

A. Yes, sir; about eight feet in width, with a slope of about three feet in height. The required three by twelve (3 by 12) plank, level with the top of the rails, are not placed where there are double tracks. Where there are single tracks they are in some places entirely worn out, and in others in bad order. Additional drainage is needed under the tracks of this line in many places.

Camp and Magazine extension.

The intersections on this line need repairs on down track at "Peters," "Belle Castle," "Dufossat," "Lyon," and "Lower Napo-

leon" strs.; also at Nashville Ave. and Soniat and Belle Castle, on up track. The required 3 by 12 plank, level with top of rails, are not placed where there are double tracks. Where there are single tracks they are in some places entirely worn out, and in others in bad order. Additional drainage is needed under the tracks of this line.

Respectfully, etc.

Cross-examination by Mr. BUCK:

Q. The drainage that you speak of in the sixth district is generally defective, is it not?

A. Yes, sir; I think that it is generally defective, but the drains ought to be enlarged and increased.

—. Have the ditches in the 6th district uniformly been in a condition to drain up the district?

A. No, sir.

32 Q. Prytania street is pretty low?

A. Part of it—the track is low.

Q. It was built on the lines and levels given by the city surveyor at the time?

A. I presume so. I have no personal knowledge of it.

Q. Have the ditches on Prytania street ever been ditched by the city of New Orleans within your recollection?

A. I could not say. I have nothing to do with the cleaning of them out.

Q. Under whose instructions or directions did you make this investigation—this examination and this report, Mr. Harrod?

A. This one?

Q. Yes.

A. Under direction of this committee.

Q. Under direction from the committee to whom it is addressed?

A. Yes, sir.

Q. Did you have any communication with regard to it from the administrator of public works?

A. No, sir; it was a communication addressed to me by the committee and I answered it.

Q. Did you makeany demand, or any one for the city that you know of, on the City R. R. Co. to do this work that you report here?

A. No, sir; I simply made this report to the committee at their request.

Q. Then you received instructions from the committee to make a general report of the conditions of the road; you did so and returned the report to the committee?

A. Yes, sir.

By the COURT:

Q. I understand you to say that you are the city surveyor, Mr. Harrod?

A. Yes, sir.

By Mr. BUCK:

33 Q. You made the report in that way at the request of the committee?

A. Yes, sir.

Q. Without any connection, however, with the commissioner of public works?

A. Yes, sir.

Q. And no notice was given of the result of your investigation, so far as you know, to the defendant in this case, The City Railroad Company?

A. I sent this to the company.

Q. You were not instructed to make any demand upon the company to have the work done?

A. No, sir.

Q. And therefore you did not do so?

A. No, sir.

Q. Do you know what has been the custom of the department of public improvements and works in regard to notifying the city railroad companies of necessary repairs to bridges and crossings?

A. During the present administration I have been called on several times, frequently — the commissioner of public works, to furnish information about such matters, and my impression has been, of course, that it was to enable him to make demands.

Q. And on these demands has not, for instance, this particular company, as a rule, complied with the demands of that character?

A. I could not say. It's not my knowledge that he made demands or not.

Q. You spoke in the early part of your testimony about some bridges being broken through. Have you any idea how those are done?

A. By extremely heavy hauling over them and by the setting of the curb over which they rest. The setting causes uneven bearing.

Q. You speak in your report in a general way that the ditches require draining and cleaning, etc. Do you know whether
34 the company defendant is under any obligation to clean the gutters? Did you simply embrace that as part of your report in answer to that request to make a general report, or did you insert it upon the idea that the company was bound to do that work?

A. I am not aware that I stated anything about cleaning ditches. I stated that the drainage *that the drainage* was not sufficient and should be increased by enlarging and straightening the culverts.

Q. Do you know of any demand ever being made upon this company during the period of your services as surveyor for the purpose of doing any wooden planking on any of the mud streets?

A. I have made none, sir.

Q. Mr. Harrod, is it not a fact that the street railroads, particularly this of the defendant company, suffer greatly over the heavy loads that are permitted to be carried by the teams in this city— tracks are impaired, crossings injured, in consequenceof excessive loads?

A. Yes, sir; the railroad tracks are injured by the very heavy haulings.

Q. Is there not unusually heavy haulings, in excess of the amount permitted under the ordinances of the city of N. O.?

A. I should imagine that the New Orleans traffic was comparatively light with other great cities, and I don't know anything here that would not be in the business of large cities.

Q. Are you familiar with ordinances of the city of N. O. on that subject in the Digest?

A. I have not read the Digest.

Q. I know that you have not read the Digest, but I ask you are you familiar with the ordinances of the city of N. O. on the subject of legal loads that vehicles are permitted to carry?

35 By Mr. GILMORE: I object on the ground of irrelevancy. Objection overruled.

A. I do not recall that ordinance.

Mr. I. W. BROWNE, assistant surveyor, sworn, says:

By Mr. GILMORE:

Q. You are city surveyor?

A. Yes, sir.

Q. Did you make any investigation of the conditions of the tracks of the City and Lake R. R. Co. and the streets through which they pass? Did you make a report on the same?

A. I made a report on a portion of the Rampart and Dauphine Street line.

Q. Will you look at this document and state whether that is your report.

A. Yes, sir; that's my report.

Q. Dictate it to the stenographer.

A. NEW ORLEANS, *November 24th*, 1888.

"Major Harrod," city surveyor.

DEAR SIR: At the request of the Hon. A. Delavigne I have made a careful examination of——

By Mr. BUCK:

Q. What were you called upon to report of?

A. A report of the drainage of that section of the country—of that section of the city.

Q. When was the report made?

A. Last November.

Q. November, 1888?

—. Yes, sir.

36 By Mr. BUCK: I object to the introduction of that report, which is a report made to Mr. Harrod, city surveyor, of a certain part of the city, is it not (to witness)?

A. Yes, sir.

Q. In connection with the city railroad company's tracks, or city generally?

A. Well, the object was to investigate and see to what extent the drainage of that section was impeded by the tracks on Dauphine street between Poland and the Barracks.

Q. And you made that investigation at the request of the city surveyor?

A. No, sir; at the request of Mr. A. Delavigne, and made to the city surveyor.

By the COURT: The court considers that under the allegations of the petition that the plaintiffs can prove that the culverts of this road are out of order, or that the defendant has not complied with its contracts; but the court considers that that proof must be legal evidence, and that the report made at the request of the member of the city council by an assistant city surveyor and handed to the chief surveyor on questions of drainage is not properly evidence to prove the allegations of the petition, particularly when made long prior to the institution of the suit, in November, 1888.

It is proper evidence.

Objection sustained.

To which ruling of the — counsel for pl'ff excepts and reserves this note in lieu of a bill of exception and annexes hereto the report of Mr. L. W. Browne, ass't city surveyor.

By Mr. GILMORE:

Q. Have you ever been over any part of this track since
37 this report has been made?

A. I have been over it and examined it. I go over portions of it every day.

Q. You heard Major Harrod's testimony. Can you corroborate his testimony?

A. Yes, sir; in a general way.

"No cross-examination."

(Jurat waived.)

Mr. SAMUEL L. GILMORE says:

I will state, if the court please, that Captain Pearce, at my request, made an examination of all of the lines of the New Orleans City and Lake R. R. Co. and handed me this document and told me that this was his report of the condition and he was to be present in court this morning to corroborate it. It is dated June 7th, 1889, and signed by "William Pearce," not as superintendent of public works, but it is written on the paper of the department of public works, and it is admitted that he was general superintendent of the department of public works.

It is further admitted that it is in the handwriting of Mr. Pearce and presumably made by him.

It is admitted that Mr. Pearce died this morning.

By Mr. BUCK: I will object to the relator in this case in regard to this report is in no worse position than any plaintiff would be who had lost a witness. The evidence, I presume, which this report

is intended to show must necessarily be within the knowledge of others who can easily prove it without Mr. Pearce.

38 And, furthermore, Captain Pearce is not the proper officer to make a report of this character at the request of the city attorney or any part of the council. The proper officer charged with the responsibility of seeing to the enforcement of their contracts is the commissioner of public works himself, and there is no equitable or legal reason why the pl'f should be entitled to this report to be in evidence.

By the COURT:

Q. Do you know whether or not this report was made by Captain Pearce in conjunction with the defendants in this suit?

A. No, sir; it was made by him alone, but it was made in the course of his official duty at the request of the assistant city attorney.

By the COURT: The court sustains the objection.

To which ruling of the court counsel for plaintiff excepts and reserves a note in lieu of a formal bill and makes the report a part of the same.

By Mr. GILMORE: I offer in evidence and file the report of the special committee on contracts and franchises, dated New Orleans, May 7th, 1889.

By Mr. BUCK: I object on the grounds previously stated.

By the COURT: Objection sustained.

By Mr. GILMORE: To which ruling of the court counsel for plaintiff excepts and takes this note instead of a formal bill and annexes the report hereto.

39 *Testimony Taken in Open Court by Expert Selected by Counsel for all Parties Monday, July 1st, 1889, and Filed July 26th, 1889.*

CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. } No. 27049. Division "B."

Hon. E. T. LECHE, sworn on behalf of the defendant, says:

By Mr. BUCK:

Q. You are the commissioner of public works?

A. Yes, sir.

Q. Whom did you succeed, Mr. Leche?

A. General G. T. Beauregard.

Q. Did you succeed him immediately upon his resignation, or was there a little interregnum?

A. Yes, sir; I believe he was away, and he left on a leave of absence and resigned during the leave of absence, and I was elected at the expiration of his leave, which was the 10th of August, 1888, and consequently I took charge of the office or the office was transferred to me by his chief deputy, Col. Villere.

Q. The charter of the city prescribes your duties, of course?

A. Yes, sir; I think so.

Q. You are practically the successor of what, under the charter of 1870, was defined as department of improvements?

A. Yes, sir.

Q. As such you perform all of the duties and functions
40 that were formerly exercised by that department?

A. Yes, sir, and department of commissioner besides.

Q. Is it the part of the duties of your office and is that duty usually performed by you of superintending the streets, and particularly the relations of the city to the various street railway companies?

A. Yes, sir.

By Mr. GILMORE: I object, that the charter of the city is the best evidence.

By Mr. BUCK:

Q. No other department assumes to act in that matter?

By Mr. GILMORE: I ask for your honor's ruling on my objection.

By the COURT: The objection goes to the effect and not to the admissibility.

A. I agree—at least the court's ruling on that was the legal advice that I obtained prior to my eviction—on being sworn in I sought legal advice to enlighten me as much as possible, particularly in cases of corporations.

Q. You have acted upon that assumption of your duties?

A. Yes, sir; entirely.

Q. No other executive officers of the city claim to have any duty to perform in that regard?

A. No, sir. The charter prescribes what the officers have to do.

Q. Did you have anything to do in the report of Mr. Harrod to the council in relation to the tracks?

A. To make it clear, the first thing I did the following week that I was in I made a report and stated that the trouble that existed previously with the corporation—they claimed that they had complied and my predecessors that they had not; so I wrote a letter to the city surveyor, of which I have a copy at my office, asking
41 him to give me specifications in detail of every street railroad in the city of New Orleans, so I could proceed immediately against them. We agreed to take, of course, and the first was the Spanish Fort, now owned by the Northeaster Company, and he furnished me with specifications. First, there was a survey, and I went over the road, and afterward the city surveyor went over it, and he furnished me with the specifications, which I furnished the Spanish Fort road, through their president, Mr. Shiff, and on their failure we sued, and that case is now pending in court.

The next case was the St. Charles—McLellan's railroad—the St. Charles and Carondelet Street line. I was furnished with detailed specifications, and I furnished them to the president of the road, and that ended it. I have made several demands upon the surveyor, and

I failed to receive the specifications asked for as to the other city railroads. I next heard that the council committee, with the surveyor and his assistants, were getting up these specifications, and that they had notified these different roads.

Q. You say "notified." You don't mean to say it as a fact? You only heard that they had notified the company? You don't know what they did?

A. No, sir; I only heard that they had.

Q. You have, then, made no demand as commissioner of public works upon the New Orleans City and Lake R. R. Co. to comply with any of these specifications?

A. No, sir; the surveyor has failed to furnish them to me up to date.

Q. You have asked him to furnish them?

A. Yes, sir; as per letters in my office.

Q. And he has failed or neglected so to do?

A. Yes, sir.

Q. When any particular thing is to be done—say that there
42 is a bridge or anything out of repair of any special character—you notify the office to attend to it.

A. Yes, sir.

Q. Have you ever made any request upon the city railroad company for any repairs that was not complied with?

A. That I would have to refer to my books; I could not say positively. For instance, the council by resolutions ordered me to notify the City and Lake R. R. Co. to remove their tracks between Camp and Magazine street this side of Delord — Poeyfarre streets, and the company contended that they had the right, which is the fact, and also on Caffin's lane, which they have removed.

Q. And that was done at considerable expense to the company?

A. Yes, sir; I should imagine so. I saw sixty or a hundred men working there.

Q. Do you know anything of your own personal knowledge of the fact stated in this report as to the conditions of the tracks?

A. No, sir; I do not, because the charter defines how the roads shall be built, and under whose supervision, and that they should be in accordance with the grades and levels of the city surveyor, and he is supposed to know those things, and consequently he is the proper officer to furnish me with the specifications, and they would be accepted by me and through my department furnished to the companies.

Q. And then you would act upon them?

A. Yes, sir; and then he and I would know.

Q. And in this case he has not given you the report that you have asked him to do?

A. No, sir; not yet.

Q. Did you not authorize your deputies to act in any of these matters as regards to the notice?

43 A. Yes, sir.

Q. Any complaints made as to the bridges, etc., being out of order—they must be attended to immediately?

A. Yes, sir.
Q. And those demands are generally complied with?
A. Yes, sir; generally complied with.

Cross-examination by Mr. GILMORE:

Q. These demands that you made on the railroad company, were they made on your own motion or at the request of the council?
A. Oh, no. Why, sir, the council would have to meet about eight times a day.
Q. So that some demands you made request of your own motion?
A. It's only sometimes that the council pass these resolutions.
Q. Does not the charter of which you speak give the council control of all the streets?
A. Yes, sir; I suppose so. They have control of my department.

By Mr. GILMORE: I will offer in evidence the city charter.

Agreement.—It is agreed that the charter of the city can be used in the bound acts of 1882 in case of appeal.

By Mr. BUCK: In connection with the testimony of Mr. —— we have made no plea of offset, but in connection with his testimony since they have brought out the question of claims that the company makes no desire to offer in evidence ordinance, as reported in Jewel's Digest, of the Shelly-Seymour grant and all of the ordinances in relation to the grant or privilege of the Coliseum-Street railway, on Camp and Coliseum streets.
By Mr. GILMORE: We object as totally and wholly irrelevant.
44 By the COURT: The objection goes to the effect and not to the admissibility.

FRED. WINTZ, sworn for defendants, says:

By Mr. BUCK:

Q. Mr. Wintz, you are the managing superintendent—that is, the business superintendent—of the New Orleans City and Lake Railroad Company?
A. Yes, sir.
Q. You have charge of the tracks, works, cars, crossings, etc.?
A. Yes, sir.
Q. What is the general condition of your railroads in reference to compliance with the obligations of keeping the street crossings, culverts, etc., in repair under your contract with the city of New Orleans?
A. In perfect repair.
Q. Have you at any time, and particularly lately, received any notification or demand upon the part of the city of New Orleans that you did not comply with?
—. I don't think that I ever received one that I have not com-

plied with unless it was not in our contract, and we do not pay any attention to it, but if — pertains to the bridges and roads I generally attend to it immediately. I say that our tracks are in a better condition than any other road in the city.

Q. I find in the report of Mr. Harrod that the iron bridges on Peters and Levee streets, at the intersection of Conti and St. Louis streets, and in some other places, are in need of repairs. Has your attention ever been called to those bridges?

A. Yes, sir; and I have repaired them since—that is, I have
45 given orders to get iron plates, and we replace with iron plates; they were broken by heavy loads.

Q. Where is that broken bridge that the surveyor spoke of?

A. There are two or three of them, and I — given the orders to have new plates made. The places are covered with wood now until we get the new plates.

Q. Is it not in between the track that the breakage occurs?

A. No, sir; between the track and the gutter.

Q. On the unpaved streets the spaces between the lines of the tracks and the gutter of the street are not paved as required, nor any demand ever been made on the railroad company to do any planking?

A. No, sir; never.

Q. Mr. Harrod says that the plank road in the block below Toledano street, between Toledano and Eighth, on Magazine is in very bad order.

A. Between Toledano and Louisiana Ave.?

Q. No; below Toledano.

A. Yes, sir; on Magazine above Washington.

Q. No; it is Camp and Prytania.

A. No, sir; there is no planking there at all. It is from Toledano to Louisiana avenue; it is on the Magazine-Street line. There is none on the Prytania.

Q. There is planking from Toledano to Louisiana avenue?

A. Yes, sir.

Q. Is that in bad condition?

A. No, sir.

Q. That road—the Upper Prytania and Upper Magazine—have been constructed since when?

A. Last five or six years.

Q. Built and constructed under the direct supervision of the city surveyor?

46 A. Yes, sir; culverts, grades, and everything, according to the request of the city surveyor.

Q. Don't you keep these roads in good repair?

A. It's our interest to do so in order to save our road.

Q. Are not the grades on that road rather low?

A. That's the trouble, and I fought with the surveyor several times while we were building it. Says I, You are putting us down in the mud, and it is too low. But so far as touching the draining there has not been a spade put to one of those ditches up there since the road has been built, and our road is constantly inundated on

account of lack of drainage; from overflow we are inundated. They talk about culverts. There has not been a culvert cleaned since it has been built.

Q. Mr. Harrod says that the planking at the upper end of the line at Magazine street is in bad order and needs repair.

A. It was after that spell of hot weather. We could not get it in good order, but it has been repaired since.

Q. Now he comes to Rampart and Dauphine. Both bridges at the intersection of Dauphine and Marigny need repairs.

A. They have been repaired. We were notified from Mr. Leche and we repaired them.

Q. The planking on Dauphine street near Poland street is in bad order?

A. No, sir.

Q. He says that you use a "T" rail instead of some other kind of rail—flat rail instead of "T" rail.

A. Yes, sir.

Q. How long has the "T" rail been there?

A. We put it there when we built the road, in 1861.

Q. And that railroad was there when the track was renewed, in 1879?

A. Yes, sir; and been there ever since.

Q. And no complaint ever made about it until now?

47 A. No, sir; the first complaint *ever* I ever heard was Mr. Harrod's report.

—. There was never any request ever made to change it?

A. No, sir.

Q. The fact of the absence of the planking on the sides and the use of the "T" instead of the flat rail and the want of drainage on the lower part of this line—what have you to do with the drainage?

A. Nothing at all. There has not been a ditch cleaned around there in ten years, except here lately Mr. Leche has done some work with the work-house gang cleaning out some of the streets.

Q. If the city was properly drained it would be easy to keep your tracks in repair?

A. Yes, sir; much easier.

Q. Mr. Harrod in a sort of general way says here in regard to Esplanade street that no special work has been done on the unpaved part of this street in the way of planking it or keeping it in good order from curb to curb. Is not Esplanade street in pretty good condition?

—. At that time Esplanade street from the end to the neutral ground is a mud street, and we cannot keep mud streets in repair in wet weather, and we can only repair it when the weather gets dry. I have repaired it, and it is now in first-rate condition, better than any of the city streets, because you can't pass through the street—mud streets, least one-half of them—now after three months of dry weather.

Q. The surveyor reports here that no sufficient work has been

done by any of the company's officials to keeping the roadways in good order on Canal street.

A. We have nothing to do with the roadways on Canal street, and we have never touched them.

48 Q. You were connected with the old railroad company?

A. Yes, sir.

Q. You were never asked to keep the roadways on Canal street in repair?

A. No, sir; never.

Q. He says here that on Camp and Prytania Street line that there are intersections in need of repairs at the corner of Bordeaux, Milan, Delachaise, and other streets mentioned here.

A. Well, it was the same thing. During that wet spell we could not repair them and could not do anything. They are all now repaired.

Q. You have a large force of men repairing them, have you not?

A. Yes, sir; over one hundred men are working on the streets for the last four months, since we have had good weather.

Q. Mr. Harrod claims that in different parts, particularly on this uptown Magazine street, that require 3 by 12 plank level *which* the top of the rail, that they are not placed where there are double tracks.

A. We never put them, because there is not enough room to put them in. The street up there is so narrow that the double track occupies the whole street, and there is not room enough to put anything there on the outside of the track.

Q. Where there are single tracks they are in some places worn out and in others in bad order?

A. I have had them all repaired.

Q. "Additional drainage." You have anything to do with "additional drainage"?

A. There is no drainage up there. They have never drained a ditch up there. They didn't clean under the bridges, and they are all full of mud.

49 Q. Will you explain to the judge a little something about that part of the Upper Prytania line, where there is no street and where the city railroad track is built upon a narrow embankment through a low piece of ground, and how—as to how it was when the railroad was built?

A. It was a perfect sea when you built the road; the whole place was nothing but a sea. We even floated the timber in that shallow place with which to build the tracks. We built the road on trestlework and hauled earth with our construction cars and filled up.

Q. In other words, there was no street there, but was a low lake-like marsh filled up with water?

A. Most of the year it was a perfect sea—a perfect lake.

Q. Covering how many squares of ground?

A. I suppose about five or six squares in length.

Q. So that you practically built a road-bed?

A. Yes, sir; from Upper Line street to Joseph street, about five or six squares.

Q. You did not construct more of the street than was necessary to build your track?

A. No, sir.

Q. You were never asked to build a street?

A. Mr. Harrod says no wagons can pass. Why, sir, the wagons follow our cars up and down, and when they built the exposition buildings most of the stuff — over our tracks.

—. ——.

A. Yes, sir.

Q. In a general way, then, you found it to your interest and you do keep your tracks in as good a condition as possible?

A. Not only for the benefit of the passengers, but for our own commerce and economy.

Q. And, as far as you know, you have never received any
50 & 51 specific demands from the city government or any one that was within the terms of your contract that you did not comply with?

A. I complied with them immediately.

Q. Were you present—I think you were, although I don't remember exactly—at the meeting of the city council committee in the city council room—subcommittee of which Mr. Brittin was chairman—in company with Mr. Walker and myself?

A. Yes, sir; but they did not ask me any questions, though.

Q. Did they not examine you in any way?

A. No, sir.

Q. You simply sat there and heard the general discussion between Mr. Walker and the members of the committee?

A. Yes, sir.

Q. How did you understand the position of Mr. Walker as president of the railroad in regard to the obligations of the company as testified to by Mr. Brittin?

A. I understood Mr. Walker's idea was that all of the requests were complied with.

Q. Did not pretend to say that we threw up the contract, or that we had no obligations toward the city, or nothing of that kind?

A. No, sir.

Cross-examination by Mr. GILMORE:

Q. The proceedings that were had before the committee were published in the newspapers, were they not? The proceedings had when you and Mr. Walker — sent to the special committee on contracts, were those proceedings published in the newspapers?

A. I don't know. I don't recollect. They might have been.

Q. This contract of yours requires your company to put on unpaved streets over which its lines pass—to pave the space between the rails and to plank the space between the line?

52 A. Yes, sir.

Q. Have you planked Laurel street?

A. No, sir; our contract does not call for it. There is to be put on each side of the track—one single planking our contract calls for.

Q. Then that is one thing that your contract calls for. Have you planked Laurel street?

A. No, sir.

—. How many unpaved streets over the Magazine-Street line run on?

A. Laurel and Constance Sts.

Q. Well, any of these streets—have they ever been paved from rail to gutter?

A. No, sir; we put one plank on each side of the track.

Q. And that is on the level with the top of the rail?

A. Our contract calls for that.

Q. And the Prytania-Street line, how many unpaved streets does the track of the Prytania run on?

A. It is a mud street from Louisiana Ave. up. It's a double track, eighteen feet wide, plank road.

Q. Have you ever paved the outside of the tracks to the edge of the gutters?

A. No, sir; we were not required to do it.

Q. Is there any other unpaved streets on the Prytania line?

A. No, sir; we leave Prytania street when we get to Upper Line street, and then we go one square toward Pott street.

By Mr. HUNT:

Q. How many squares of ground are there unpaved on the Prytania line?

A. Well, Prytania street is a mud street from Toledano to Upper Line street, and on that we have double tracks, which is eighteen feet wide, and it is planked between the tracks, making eighteen feet of planking.

53 Q. It has none outside of the tracks?

A. No, sir; above Upper Line street we come to Pott street. It is one square towards the woods; and then we continue up Pott street.

Q. Is Pott street paved?

—. No, sir; it is a mud street.

Q. Is it paved on the outside with planks?

A. No, sir; and then there is a double track, Mr. Hunt, all of the way to the exposition grounds—in a double track eighteen feet wide.

Q. Have you paved that on the outside?

A. No, sir.

Q. How many miles of street have you named now of unpaved streets; about how many miles, do you suppose?

—. Well, on Prytania street there is from Upper Line street to the exposition grounds.

Q. How many miles, about, Mr. Wintz, of unpaved streets on the lines which you have spoken of now?

A. Well, where there is double tracks there is no paving except the one plank on the outside, or maybe two miles and a half altogether.

By Mr. GILMORE:

Q. While you are on the Prytania-Street line you say that there are no double tracks from the exposition grounds to where?

A. To Joseph street.

Q. Have you got that upright post that was required by the contract—3 by 12?

—. There is no reason for that, for, Mr. Gilmore, the street is so narrow there; it's only about twenty feet wide.

Q. Now, the Rampart and Dauphine Street line, Mr. Wintz—how many unpaved streets has that got?

A. Well, we have three lines unpaved. The Rampart and Dauphine has two streets. Rampart street is unpaved from Enghien
54 street, from Elysian Fields to Poland car station. Those are mud streets.

Q. How many squares is that, about?

A. About a mile and a quarter.

Q. You have no planking outside of the tracks?

A. No, sir; we have rock placed for about a foot on each side of the track.

Q. Rock placed?

A. Yes, sir.

Q. For about two feet on each side of the track?

A. Yes, sir.

Q. Esplanade street, you have already said, is a mud street?

A. Yes, sir.

Q. There is no planking there?

A. No, sir.

Q. From what street?

A. From, I believe, where Bayou road crosses or intersects Esplanade street.

Q. How far is that?

A. About a mile.

Q. Have you any paving on there?

A. No, sir.

Q. Is Poland street a mud street?

—. Yes, sir; Poland street is occupied by two tracks, and they extend from gutter to gutter.

Q. Is there any outside paving?

A. No, sir; we have taken up the whole street with a double track.

Q. How many squares there?

A. Six squares.

—. No planking outside of the outer track?

A. No, sir.

55 By Mr. HART:

Q. You did not take up the whole street?

A. We take up the whole street. It is that narrow.

Q. Have you many feet on the outside?

A. There's about one foot on the outside.

—. Well, outside of the track is that one foot paved?

A. No, sir; the wide gutters on each side would not allow it.

Q. Do the Rampart and Dauphine street cars run on Delery St.?

A. Yes, sir.

Q. Is Delery a paved or unpaved street?

A. Mud street.

Q. Any planking on the outside of the track?

A. No, sir.

Q. On Levee street that line runs from Delery to the slaughter-house. How far is that?

A. About a mile.

Q. Any inside planking there?

A. Yes, sir; one plank on each side.

Q. But no planking from the outside rail to the edge of the gutter?

A. No, sir; it is not required, as it is not in the contract.

Q. How many squares on Delery street does your car run on that street?

A. On Delery street?

Q. Yes, sir.

A. About six squares (blocks).

Q. You have already stated that there was no planking there?

A. No, sir.

Q. Well, sir, the Canal street and Metarie Ridge lines—how many mud streets do you traverse on that railroad?

A. It's mud all of the way through, not only mud, but a puddle all of the way through. It has never been drained since the line was built. There are no ditches there at all.

56 Q. What distance does that road cover?

A. About a mile and a half.

Q. Mile and a half of unpaved part of Canal street?

A. No; of the Metarie Ridge road.

Q. You have never planked that on the outside?

A. No, sir; we have never been asked to do it.

Q. Are all these roads planked between the two tracks?

A. Yes, sir. First, the track is paved with wood, and then the three or four feet between the tracks is paved, and that makes it about eighteen feet wide.

Q. And now the Metarie Ridge and Bayou St. John road—how many miles is that?

A. I say that it is a mile and a half; that's the one that I am speaking of.

Q. Well, you have mixed them up. I was asking about the Canal street and the Metarie Ridge.

A. The Metarie Ridge is a separate road from the Canal Str. road. The Metarie Ridge was from the Black bridge, as they call it, over the Bayou St. John, and it is about a mile and a half.

Q. And there is no planking there at all?

A. No, sir.

Q. And now the road that runs out Canal street to the cemeteries—how many miles of street do you run on there?

A. We do not run on the street. We run on the neutral ground—the neutral ground.

Q. Any paving outside of the tracks?

A. No, sir; not on that neutral ground.

Q. How many miles do you traverse on that street?

A. There is a shell road there on both sides.

Q. All of the way?

A. Yes, sir.

57 Q. From what street?

A. Claiborne street.

Q. There is no paved street?

A. No, sir.

Q. How many miles would there be where the shell road begins to the end of your line?

A. About two miles and a half from Claiborne street to the Metarie ridge.

Q. Now, the Esplanade and French Market line—how many miles of unpaved street does that traverse?

A. From the neutral ground it runs on the same track as does the Rampart and Esplanade street cars. We run on the neutral ground from Rampart street to the neutral ground.

Q. On what street?

A. On Esplanade street.

Q. Don't they run on Levee street?

A. Yes, sir.

Q. Levee is an unpaved street?

A. No, sir; it's square block.

Q. Where the Esplanade and French Market cars run on it?

A. Yes, sir.

Q. Does it run on Victory street?

A. No, sir; it does not run in that direction.

Q. Does it run on Bourbon street?

A. No, sir.

Q. On Rampart street?

—. No, sir; the French Market line does not.

Q. How many miles of unpaved street does the French Market line run through?

A. It runs about a mile, I suppose.

Q. Is there any planking on that unpaved street that this line runs through?

A. There is one portion of it that the city has been shelling

58 for the last few years with oyster shells.

By Mr. HUNT:

Q. Has the company planked it?

A. No, sir; we were never requested to plank it.

By Mr. GILMORE:

Q. Now, the Levee and Barracks line—how many miles of unpaved street has that road?

A. There's one track, about a mile of unpaved streets there; that is about all.

Q. Is that the only dirt road that it has?

A. Yes, sir.

Q. About a mile of dirt road?

A. Yes, sir; one of them is paved and the other is not. One is paved to Poland street with cobble-stones; on Rampart Street line that is paved, and from Enghien to Poland street is mud.

Q. How many miles is that?

A. About a mile.

Q. No planking there.

A. No, sir.

Q. Now, the street where there is no planking—is the company in the habit of keeping these streets in repair?

A. Yes, sir; where you can drive on and off as much as you please; in better condition than any other streets.

Q. You said something about the iron bridges at the corner of Levee and Conti streets and Levee and St. Louis streets.

A. Yes, sir; I have ordered bridges to be put in these places.

Q. When?

A. About two weeks ago.

Q. Since the filing of this suit?

A. Yes, sir; I did not know that there was any breaks before that. They were broke last year by the hauling of heavy machinery by Mr. Sheen's heavy floats.

Q. They were in bad order since the institution of this suit?

59 A. No, sir; they were repaired by wooden bridges.

Q. As to the iron bridges at the corner of Conti and St. Louis streets and Levee street, I understand you to say that repairs had been ordered since the institution of this suit.

A. Yes, sir. I have ordered new plates. We had them covered with wood for about a year or so.

Q. On Dauphine street below Poland street there is a "T" rail?

A. That "T" rail was put there when the road was built, in 1860.

Q. You say that it was put there in 1865?

A. Yes, sir.

Q. And has been there ever since?

A. Yes, sir; and it will last for sixty years longer.

Q. Now, Dauphine street below Poland street—are you not in the habit of enlarging and straightening culverts and building additional culverts on that street to preserve proper drainage?

A. We have done it when we were requested by the commissioner of streets.

Q. When were you at any time requested to make this straightening and enlarging of culverts?

A. I suppose about a year and a half ago, I believe it was, I built several of them.

Q. On what street?

A. On Hancock street.

Q. Was there not one on Dauphine street?

A. We put bridges on Dauphine street. When we ran the Dau-

phine-street track down from Poland street to the slaughter-house those cross-streets were not opened, or at least a very few of them were.

Q. You were asked to put culverts there?

A. Yes, sir; and I done it. I put two or three of them there. It's our interest to keep our tracks drained.

60 Q. Camp and Prytania line, the plank road below Toledano is in bad order. When was that plank road put there?

A. It's a double track there, sir.

Q. But when was that plank road put there?

A. There is no plank road there. It's only the width of our tracks.

Q. You say that there is no plank road below Toledano?

A. No, sir; there is only one square where we put plank on one side when we had the Toledano-street station there. We put planking on one side.

Q. What year was that put on?

A. Ten or twelve years ago it was put on one side.

Q. This planking that you speak of begins at what street and ends at what street?

A. Toledano street to Harmony street.

Q. Is there a plank road above Harmony street?

A. No, sir; not on Prytania.

Q. I want to get at where this plank road is.

A. There was never any plank road. On one side we had planking ten feet wide.

Q. That was on the outside of the rails?

A. Yes, sir.

Q. How long ago was that?

A. About ten years ago.

Q. How many feet wide?

A. Ten feet.

Q. Above or below Toledano street?

A. Below Toledano.

Q. How many squares is it in length?

A. About one block.

Q. And that the plank road that he refers to?

A. I suppose so.

61 Q. When did you last repair that?

A. I don't know when we repaired it. There is no necessity of repairing it. It might be repaired every day if there was a plank rotten.

Q. When, to your knowledge, did you last put a plank on there?

A. I don't keep the run of when these planks get rotten. I give the foreman orders and — reports to me.

Q. So that you really don't know when repairs are put down until reports are made to you?

A. I know when repairs are put down, because I give the orders for that.

Q. Nobody else gives orders for repairs but you?

A. No, sir.

Q. When did you last give orders for the repairs of that plank road below Toledano street?

A. I did not give any orders. We keep it up as we go along.

Q. When did you last give any orders for repairs?

A. I don't know.

By the COURT:

Q. You either know or don't know, Mr. Wintz.

A. I said that I don't know at what date.

By Mr. GILMORE: When did you last give an order for the repairs of the plank road at the upper end of the line on the Camp and Magazine Street line, on Upper Magazine street?

A. When I gave orders?

Q. Yes.

A. About two months ago.

Q. You gave orders to do it about two months ago—to do what?

A. To raise the tracks, repair the planking, and put it in good order.

62 Q. Was that order in writing?

A. That order — in writing. We get orders from the commissioner's department to fix our tracks.

Q. Then you got an order from the improvements department to repair the plank—the plank road—at the upper end of the line?

A. We get orders very often. We get orders most every day.

Q. You got an order, then, to repair?

A. Yes, sir; I suppose so.

Q. These orders that you get to repair—whom do you give them to?

A. To our foreman.

Q. Do you give them in writing?

A. No, sir.

Q. Do you receive instructions from anybody about the repairs?

A. I know my business, and I am authorized to keep the road and everything in repair.

Q. Anybody else give you any instructions?

A. When Mr. Walker gets an order from the department he turns them over to me.

Q. Is it not a fact that under the last administration you were constantly receiving orders from the commissioners of public works to do repairs which you never did?

A. No, sir; I never got any that I did not attend to.

Q. You did not receive any that you did not attend to?

A. No, sir.

Q. And you state positively that you attended to my request that was made upon you by the late commissioner of public works, Mr. Fitzpatrick?

A. Yes, sir.

Q. And Mr. Walker handed you these orders?

A. Yes, sir; and I attended to them.

63 Q. All that you know about the orders are the orders that Mr. Walker gives you?

A. They send them to him and he sends them to me.

Q. So that you don't know of any orders except such reports that Mr. Walker hands you?

A. I find them on his desk or he hands them to me.

Q. You don't know of any other report except those that he hands to you?

A. Yes, sir.

Q. You never received any direct from the city?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. In what instance?

A. Every day—most every day.

Q. Just mention one—just mention an instance, and send one of those letters.

A. I don't keep them; I generally tear them up or throw them away.

Q. Letters that you receive from the commissioner of public works—you tear them up and throw them away?

A. I don't get them from him. I get them from his deputies.

Q. What's his name?

A. Levy.

Q. What is he?

A. Foreman of a gang.

Q. What gang?

A. City gang.

Q. What city gang?

A. New Orleans city gang.

Q. What; city street gang?

A. Yes, sir.

64 Q. And you get orders to do repairs to your railroad from the foreman of a street gang?

A. Yes, sir. Not only written orders, but *written* orders. When I pass them on the way they tell me there is a bridge broken, and I attend to that.

Q. Now, Mr. Wintz, in regard to those other repairs that you say that you have ordered, as testified to here in your direct examination, you said that they were ordered. Were they ordered since the institution of this suit?

A. No, sir; all along.

Q. But the class mentioned in this bill of complaint and this report of Major Harrod—and there is some other things here about repairs to bridges and other little matters of repairs to be made. Now, were those orders given since the institution of this suit?

A. They were given since the institution of the suit. As soon as the bad weather quit, since this day weather set in, I gave orders for general repairs. I give orders every day. I never gave any orders about this particular report, for I never knew that it was in existence.

By Mr. BUCK:

Q. You go over the road every day?

A. Yes, sir; every day in a buggy.

Q. You see anything out of repairs you have it repaired?

A. Yes, sir.

Q. If anybody acting in the name of the city meets you and tells you that there is a bridge at the corner of such streets out of order you attend to it and have it done without waiting to ascertain whether it's the mayor — the administrator of public improvements?

A. Yes, sir.

Q. That is to say, you received a notice, for instance, from this fellow Levy. You know that he is connected with the city as foreman or something, and he simply informs you of the fact

65 that such and such a thing is out of order somewhere?

A. Yes, sir; and I have it attended to right away.

Q. You don't stop to inquire whether he has the authority to notify you?

A. No, sir; I don't. I go by there to see if it is so and have it attended to.

Q. You take notice of the fact and then investigate, and if you find it's to be put down you do it?

A. Yes, sir.

Q. And that's the end of it?

A. Yes, sir.

Q. You don't keep any file of these things?

A. No, sir.

Q. They are generally regarding some defect somewhere?

A. Yes, sir.

Q. A hole in a bridge or crossing of some street, or something of that kind?

A. Yes, sir.

By Mr. GILMORE:

Q. You were one time president of this company?

A. Yes, sir; I was president for sixteen years.

Mr. JOSEPH A. WALKER, sworn for defendant, deposes and says:

By Mr. BUCK:

Q. You are president of the New Orleans and City R. R. Co., defendant in this suit?

A. Yes, sir.

Q. You succeeded Mr. Wintz?

A. Yes, sir.

Q. How long have you been president?

A. I think it's eight years.

66 Q. You were at the city hall before the special committee of which Mr. Brittin was the chairman?

A. Yes, sir.

Q. Purporting to investigate the railroads of the city?

A. Yes, sir.

Q. You heard the testimony of Mr. Brittin on that subject?

A. Yes, sir.

Q. Will you state to the court what, in substance, the result of that meeting — and the conversations there and how you understood the matter and as *toward* your position toward the city?

—. I would state that the interview was of a very pleasant character between us. The notifications was to the president and such directors that he deemed proper to invite, and Mr. Buck, being a director as well as the attorney, invited him in that capacity, and he stated that he was there in the capacity of a director.

We went over our various franchises and contracts as to a compliance of them, which I contended that we had done, and I did not see where we had omitted any portion of it. That was my idea of our contracts, and there was some difference of opinion between the committee and ourselves and after an interview, I should judge, of over an hour or more we could not get any closer to an understanding, and Mr. Brittin asked me if I was ready to make any concession, and I told him no; that I was not; that there was no concession on our part to make, and that's about the sum and substance of the interview.

Q. How did you reach the conclusion that there was no concession to make?

A. From the great violation of the city; she was varying her contracts to such an enormous extent.

—. You considered that you had nothing to do towards the city under your contract with her that was not done?

67 A. Nothing more than what was being done.

Q. You keep your tracks in general good repair?

A. We have to keep them in perfect repair for the protection of the company.

Q. Has any demand been made upon you in reference to the execution of the contract with regard to the planking of mud streets at any time?

A. Yes, sir; in Mr. Fitzpatrick's time a portion of Magazine street was. He sent me a communication, and we paved it from Washington street up. We planked that, and it is planked to-day, and it was just repaired a month ago, and it is in perfect order.

Q. Has any demand ever been made to plank any other portion of mud streets through which your cars run?

—. No, sir.

Q. Has any demand ever been made particularly of planking or of doing anything to the roadways of Canal street?

A. Not to plank the street; but to shell it and keep it in repair in its entirety, which was most emphatically refused to do, on the ground that we were not on the street and were only on the neutral ground, and there was a demand made by Mr. Fitzpatrick to repair a bridge at Hagan avenue, which we refused to do.

Q. Upon what ground?

A. That it was not in our contract; that it was a bridge over a canal, and on the ground that there was no mention of a canal in

our contract, and the city gave it to a contractor to fix and charged it to us, and the contractor did the work, sued, and was thrown out of court twice, and he came back here about a month ago, and Judge Monroe decided in our favor.

Q. Do you know upon what ground it was decided in our favor?

68 By Mr. GILMORE:

Q. That the "Connolly" case?

A. Yes, sir.

By Mr. GILMORE: I object on the ground that the judgment was the best evidence.

Objection maintained.

By Mr. BUCK: I offer the record in the case.

By Mr. BUCK:

Q. In other respects have you ever been notified to do anything that you have not done?

A. No, sir.

Q. On Camp street—were you ever asked to do any work on Camp street—to plank Camp street?

A. I don't think I was, Mr. Buck. If they can produce the letters I would know positive, but to the best of my recollection I think not.

Q. Coming back to the interview with Mr. Brittin and his committee, what was the ground of complaint against the city before that committee? State that as part of that interview.

A. We contended that the city had violated her contract thirty days after she had adjudicated it to us for the enormous sum of six hundred and thirty thousand dollars ($630,000), and that we had the exclusive right. As the contract will show, the city of New Orleans adjudicated to the city railroad company the exclusive right (p. 54) over the streets over which it operated. Just thirty days afterwards she sold—on the 2d of October she sold to us, and on the first day of November she sold to the Crescent City railroad a portion of Camp street.

By Mr. GILMORE:

Q. That sale in writing?

69 A. Yes, sir; it's there. Thirty — afterwards, for the consideration of ten thousand dollars, they reserved the old grant that she had forfeited. Well, the date is in there, and for the consideration of ten thousand dollars (10,000) they reserved this grant and sold part of this street through which they had given us the exclusive right, and a drainage accrued to us, the city railroad company, from that day of an average of at least one hundred dollars a day that we sustained from the very moment that that road was operated. There was a fall off in our business when this Coliseum line commenced operations down Camp street of that much to our Magazine and Prytania Street line. If I have ever been asked

to — anything on Camp street I have certainly to do it on those grounds. I don't say positively that I have; if so, it's on those grounds.

Q. Do you remember receiving that general communication, that wholesale notice, from General Beauregard—letter of May 8, 1888?

A. I don't remember that I have; but I presume it was received by us, for when the new administration went in Mr. Pearce sent one in every day. In the first place, our tracks are laid by lines and levels of the city surveyor. We cannot get a line or a level without getting his permission and paying him for it. Whether the law requires the payment I don't know, but we have to pay it, and we cannot get a line or level without paying, and we cannot lay our tracks without his lines. Now, Mr. Pearce was not in there forty-eight hours before he sent me a communication to raise these tracks. Well, it's no child play to raise these tracks; it costs ten thousand dollars a mile to lay tracks. The labor is, I think, five thousand dollars a mile, and he contended—poor gentleman; he is dead—that he knew more about railroads than railroads knew of him. But I do say
70 that we were put into the mud and we had nothing to say. Mr. Brosman put us in the mud on Prytania street on this extension, and he put us down in the mud on Magazine street, and we raised it some six inches, and we were in the mud still, and we spoke about it, and he says poor people own property along there.

By Mr. BUCK:

Q. Well, never mind that. You built the tracks originally according to lines and levels?

A. Yes, sir.

Q. And the track has become so sunken that you have had to raise it?

A. Yes, sir.

Q. You do keep it in a passable condition?

A. Yes, sir; perfect condition.

Q. Have you or not entirely complied with all of the stipulations of your contract, particularly with reference to the extension of the Magazine and Prytania Street lines?

A. Yes; more there than anywhere else. The contract will show that.

Cross-examination by Mr. GILMORE:

Q. In your interview with Mr. Brittin you took the position, as I understand it, that the city had done you damage by selling this right of way on Camp street to another road, and that therefore — do any repairs on Camp street?

A. I don't mean to say that I would not do it. I said to him that I had no concessions to make. We were in session there for an hour or more, and we came to no conclusions, and he (before we go any further)—he says, "Will you gentlemen concede to any concession?" and I said, "No; we have no concession to make whatever."

Q. But, as I understand your testimony, you take the posi-
71 tion or did take the position that this damage that was caused by the city selling this right of way released you from this obligation?

A. No, sir; I did not contend that we were released in anything.

Q. Well, what do you mean when you say that this compensated for any claim that the city might have against you?

A. We contend that we were at a loss, but I do not bring that up as an offset; but still, while the question was brought up, I think that it is an offset, but I did not use it at that interview.

Q. What did you do when the city sold this other franchise?

A. This other one?

Q. Yes, sir.

A. I was not president of the company at that time.

Q. Who was president?

A. Mr. Wintz.

Q. Do you know if anything was done at the time by the railroad?

A. Yes, sir.

Q. What did they do?

A. Enjoined them.

Q Enjoined them?

A. Yes, sir.

Q. Did they win or lose that case?

A. Yes, sir. The record will show that we lost it.

By Mr. GILMORE: I offer the record of the suit of The New Orleans City and Lake Railroad Company *vs.* The Crescent City Railroad Co., to be produced before the argument of the case.

By Mr. GILMORE:

Q. On Camp street, where the road is square blocked, are there not some of the paving between the rails cut into ruts?

A. Yes, sir.

72 Q. Now, the cobble-stone on Prytania street up to Felicity—are not some of these intersections in need of repair?

A. Intersections?

Q. Yes, sir.

A. No, sir.

By Mr. BUCK: I object. This is entirely new matter and not mentioned in the petition or report of the city surveyor.

By the COURT: This witness was placed on the stand to controvert evidence which you have brought out, and I don't consider that you have the right to examine him on this subject-matter. If you place him upon the stand and ask him questions on a branch of the *branch* of which there was nothing interrogated you make your witness, and you are bound by his answer.

By Mr. GILMORE: I withdraw the question.

By Mr. BUCK:

Q. Under the contract between you and the city of New Orleans

on the 2d of October, 1879, there was a stretch of Camp street not included?

A. Yes, sir.

Q. Do you remember from what street?

A. Yes, sir; that portion of it from St. Andrew to Poeyfarre streets. It was not omitted; it was a clerical error.

Q. It was omitted, this inadvertence?

A. Yes, sir.

Q. In giving the description of the line it went all of the way up and down back to Canal street, but that particular street was dropped out?

A. Yes, sir.

Q. It was corrected afterwards by ordinance?

73 A. Yes, sir; immediately.

Q. In what administration?

A. Mr. Shakespeare's.

Q. Without any consideration?

A. Yes, sir; the moment that they found it out, but they were rushing it through the courts in the meantime.

Q. It was corrected by the city as having been inadvertence?

A. Yes, sir.

Q. And as having been a part of the rights which you had brought?

A. Yes, sir; and Judge Pardee so stated in his decision, that it was because it was not there.

By Mr. BUCK: I offer in evidence the record of the case of The City of New Orleans, for the use of P. J. Connolly, *vs.* The New Orleans City and Lake Railroad Company, No. — of the *district* of this court, Div. "C," particularly the statements of facts made or about to be signed by the judge, in order to show what the issue in the case was and the reasons for judgment and the judgment of the court.

Case closed.

74 *Testimony Taken in Open Court by Expert Selected by Counsel Tuesday, July 2d, 1889, and July 26th, 1889.*

CITY OF NEW ORLEANS *vs.* N. O. CITY AND LAKE R. R. Co. } No. 27049. Division "B."

By Mr. GILMORE: Counsel for The City of New Orleans, plaintiff in suit, offers, introduces, and files in evidence record of the case of The City of New Orleans *vs.* Crescent City R. R. Company, 9339 of the docket of the circuit court of the United States in and for the fifth judicial circuit and eastern district of Louisiana, specially offering the decision of the U. S. court in favor of the right of the Crescent City R. R. Co. to run its cars on Camp street. Counsel reserves the right to substitute copies in lieu of the originals; also copy of the New Orleans Picayune of Saturday, April 6th, 1889,

report of the proceedings had before the special committee on contracts, where Mr. Buck and Mr. Walker were present.

By Mr. BUCK: Counsel for defendant objects to the offer of the newspaper on the ground that it is not the best evidence.

By the COURT: Objection sustained.

To which ruling of the court counsel for plaintiff excepts and reserves this note in lieu of a formal bill of exceptions and annexes hereto the newspaper, marked Exhibit "Aa."

75 JOSEPH A. WALKER, Esq., recalled for cross-examination, says:

By Mr. GILMORE:

Q. Col. Walker, did you appear before the committee on franchises and contract?

A. Yes, sir.

Q. You say that you were present at this meeting?

A. Yes, sir.

Q. Did you ever state, Mr. Walker, to the committee that your company had not complied with the conditions of your contract because the city was the first to violate the conditions?

A. No, sir; I never did concede that and do not to-day.

Q. Did you ever state to the special committee that the reason why you had not fully carried out the contract made between the city and your company was because the city had made a lease to another company of the right of way on Camp street?

A. No, sir; not that I recollect of. I did not concede that at all, Mr. Gilmore, and we did not concede it to the committee.

Q. What did you say to the committee?

A. Well, I do not recollect exactly; but I stated pretty near yesterday what would be the——

Q. State what you said.

A. I do not remember it exactly.

Q. Tell it as near as you can recollect.

A. Mr. Brittin was acting as chairman of the committee, and the question propounded to us was whether we had complied with the conditions of our contract, and I said that we had. Some portions of the streets they said that we had not, and which was the main object in bringing us there. They wanted to know if we had done such and such work. The interview was an interview of some
76 hour or hour and a half, and we did not come to any understanding whatever. They wanted to know if we would make any concessions.

By Mr. HUNT:

Q. What was said about the Crescent City Railroad Company by you?

A. I said that the city had violated her contract with the city railroad company thirty days after she had entered into it. The consideration of our contract — for six hundred and thirty thousand dollars ($630,000), and within thirty days after entering into it the

city had grossly violated it for a small consideration of ten thousand dollars ($10,000).

Q. What was said about an offset?

A. Mr. Brittin used the word "offset;" did I consider it as an "offset."

Q. What did you say?

A. I said "no," but I think that Mr. Buck replied.

Q. Mr. Buck said that he considered it as an offset?

A. I don't say that.

Q. What do you say?

A. I say that I think that Mr. Buck replied. I don't recollect exactly what he said.

Q. Then Mr. Buck spoke for himself?

A. Yes, sir.

Q. You don't remember what Mr. Buck said?

A. No, sir; not exactly.

Q. Say how nearly you do remember it, if you please, because we are here to say according to our best knowledge and belief.

A. I don't say positively that Mr. Buck did, but I am under the impression that Mr. Buck did answer that, as it was a legal point.

Q. I ask you if you did not hear what Mr. Buck said.

77 A. Perfectly. I heard him.

Q. I know you to be a gentleman of very good memory. Will you be kind enough to say what is your present memory of what Mr. Buck said? State to his honor the judge, now that you are under oath, what your present memory is of what Mr. Buck then said in that relation.

A. I really do not remember exactly what the reply was.

Q. Well, as nearly as you do remember it?

A. Well, I don't remember it at all, sir.

Q. Then, when you stated that you didn't remember it exactly you were not right. You stated a little while ago that you did not remember it exactly.

A. I don't remember it exactly.

Q. I don't care for what you said exactly. I want to know what you said according to your best knowledge and belief.

A. I think that Mr. Brittin said, "Then you consider this as an offset to the violation of your contract?" Does not the paper state there what my answer was?

Q. Yes, sir; I will find it for you (handing newspaper to witness).

A. I don't wish to evade anything.

Q. I am satisfied that you don't, sir. Then it is read that—— (After reading.)

A. No, sir; I did not say that.

Q. What was it that you said?

A. I stated this—that I thought that the city had injured the company to an enormous extent, specially on Camp street, to the amount of nearly *of* one hundred dollars per day from the moment that that company was permitted to operate on Camp street. Yes, we did contend something to that effect—something as an offset for damages accrued.

78 Q. You did consider it as an offset, did you not?
A. We have not got it.
Q. But you did consider it as an offset?
A. Yes, sir; I certainly did, sir, and I think that it should be.
Q. Mr. Buck was there as your counsel, was he not?
A. No, sir.

By Mr. BUCK:

Q. That offset that you speak about is owing to the Crescent City railroad running up there?
A. Yes, sir.
Q. But surely you are aware that I litigated for the company?
A. Yes, sir.
Q. And unsuccessfully, are you not?
A. Yes, sir.
Q. Be good enough to make your application of that.
A. Our charter will show that we had the exclusive right on Camp street, and that thirty days after that sale of this franchise, because there was an omission in the specifications from Poeyfarre street to St. Andrew street, they sold the right to this company. On page 53 of the pamphlet containing the ordinances and the contract between the city of New Orleans and the City Railroad Company is contained the paragraph which is part of the contract of the second of October, 1879—a paragraph headed "Camp and Poeyfarre, Camp and Magazine line." By the reading of that paragraph it appears that the distance of the single tracks on Camp street from Canal street to St. Andrew; double tracks on Magazine from St. Andrew to Toledano; double track on Prytania from Poeyfarre to Toledano; single track on Camp street from Poeyfarre to Canal; single track on Poeyfarre from Magazine to Camp. "There is an obvious omission of the stretch from St. Andrew to Poeyfarre on Camp St.; it says single track on Camp street from Canal to Poeyfarre."
79 In the same book, at page 62, is found ordinance No. 6109, to the effect: "Be it resolved that the specifications on page seven of ordinance 4968, A. S., be amended so as to read as follows: Instead of single track on Camp street from Poeyfarre to Canal street should be single track on Camp street from Canal to St. Andrew street."

This was adjudicated on 20th August, 1879, and subsequently, under special ordinance, council ordinance of the council No. 7127, the mayor of the city of New Orleans, Joseph A. Shakespear, was authorized to make a contract, declaring, among other things, as a preamble, "Whereas there appears to be an omission, owing to clerical error, in the specifications of the Prytania Street line," he was authorized to make a contract, which is contained in this pamphlet, at page sixty-five *et seq.*, and already offered in evidence as part of the documents offered by the plaintiff—contract of June 14th, 1882, before Sam'l Flower, city notary, at that time. When the litigation went on in the Federal court it appeared on the records that the company had no right to that stretch at all; that we had not bought it at all.

By Mr. GILMORE:

Q. Did you appeal the case?
A. I was not president.
Q. You don't know whether the company appealed the case or not?
A. I think not. Mr. Hunt knows better than I do.

By Mr. HUNT: No, sir; Mr. Wintz, then president, authorized that the case remain where it was.

By Mr. GILMORE:

Q. Mr. Walker, you say that the company did not appeal the case?
A. No, sir.
80 Q. Now, Mr. Walker, who was the president of the company at that time?
A. Mr. Wintz.
Q. He has been with the company ever since?
A. Yes, sir.
Q. In what capacity?
A. Superintendent.
Q. What was the name of the committee of the city council?
A. It was Mr. Britton, Mr. Clark, and Mr. Kepler.
Q. That was the special committee on contract?
A. Special committee on the franchises.
Q. That was about Friday, the 5th?
A. I suppose so.
—. Was Mr. Wintz present?
—. Yes, sir.

By Mr. HUNT: I was counsel for the New Orleans City and Lake Railroad Company, and argued the case reported in 12th Federal Reporter, at page 308, New Orleans City and Lake R. R. Co. *vs.* The Crescent City R. R. Co., the record of which is offered in evidence here. The reason why the record shows no further appearances and the conclusion of the suit is because I received written authorization from the president of the company, Mr. Frederick Wintz, accordingly—it being, in my opinion, communicated to the president of the company that further proceedings in that litigation could not be had to the advantage of the company.

81 *Copy of Letter from General Beauregard to Every Railroad Company in the City. Offered in Evidence by Mr. Gilmore and Filed November 14th, 1889.*

Department of Public Works, Room No. 18, City Hall; Edgar T. Leche, Commissioner.

(Copy.)

NEW ORLEANS, *May* 28, 1889.

You are hereby notified to immediately commence and without

delay complete all the repairs necessary to all the streets and gutters from curb — curb; to clean thoroughly all ditches, culverts, pipes, and gutters beneath the bridges over which or near which your tracks are laid, and to repair all bridges now in bad condition under or near your tracks the length of your line of road, in accordance with the charter and ordinances governing the building and continuation of your road, — is conducted in strict regards to the conditions of repairs and improvements imposed on it by the charter under which it exists. By complying with the express wishes of this department, as herein mentioned, you will materially aid in bringing the streets of the city to something like a good condition and assist in reducing the accumulated filth to a minimum.

(Copy of above letter was written by General Beauregard to every railroad company in the city.)

New Orleans, July 12th, 1889.

A true copy.

(Signed) JOHN B. RENAUD,
Superintendent Department of Public Works.

82 STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.
No. 27049.
Civil District Court, Division (B).

Submission.

Extract from Minutes of July the 3d, 1889.

Present: Honorable F. D. King, judge.

This case came up for further argument.

Present: S. L. Gilmore, for relator; Charles F. Buck, for respondent.

After hearing argument of counsel this case was submitted for judgment, with leave to file briefs on or before July the 10th, 1889.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.
No. 27049.
Civil District Court, Division "B."

Order Reopening Case.

Extract from Minutes of September the 26th, 1889.

Present: Honorable F. D. King, judge.

This case is reassigned by the court *ex propria motu* for the 4th day of November, 1889, for argument on briefs to be filed on that day.

83 STATE *ex Relatione* CITY OF NEW ORLEANS *vs.* NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. — No. 27049. Civil District Court, Division "B."

Submission.

Extract from Minutes of November the 4th, 1889.

Present: Honorable F. D. King, judge.

This case was submitted to the court on the evidence on file and on the briefs submitted.

84 STATE *ex Relatione* CITY OF NEW ORLEANS *vs.* NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. — No. 27049. Civil District Court. Division "B."

Opinion. Filed November 11th, 1889.

Relator alleges in substance that the defendant corporation is now operating, under certain contracts made by it with her, various lines of street railways in this city, designated as the "Levee and Barracks," the "Camp and Prytania," the "Camp and Magazine," "Rampart and Dauphine," "Canal street, Metarie road and Bayou St. John," and the "Esplanade and Bayou Bridge" lines.

The contracts and ordinances under which they were executed are annexed to and made part of the petition. They set forth the various streets through — the defendants' lines of railway run, the consideration paid to the city for the franchises, and the obligations assumed by the defendants.

Relator alleges that under the terms of said contracts by which defendant is operating said roads the defendant is bound and obligated, among other things, to keep the paved and unpaved streets through which its tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb during the continuance of its franchise and right of way; to raise, repair, and repave any and all intersections of streets, when required by relator, upon lines and levels to be furnished by the city surveyor; to widen and deepen any and all culverts and sluices to such
85 dimensions as may be required and directed by the city surveyor; to keep in repair all bridges and to make new ones, when required by relator, on all streets through which its lines pass; to pave on all unpaved streets the lines of said track within the rails with either round stones or with four-by-five-inch scantling in the best workmanlike manner, and to plank the space between the lines of the track and the gutters of the street with yellow-pine planks three inches thick, laid on stringers four inches thick by eight inches wide, and to use flat rails for all its tracks, and to keep its tracks in good order and condition.

That under the terms of said contracts, by which the defendant is operating what is known as the extensions of Camp and Prytania, and the Camp and Magazine lines, the defendant is bound and obligated, among other things, to construct all crossings, bridges, and culverts and wings of the same, on the streets through which its tracks pass, which in the opinion of the commissioner of public works and the city surveyor are at any time needed, and to keep the said streets between the banquet and lines, including all planking, crossings, bridges, and culverts and wings of same, and also all the intersections on the streets of this route, at all times in good roadway order and condition; to use flat rails, five inches, resting on suitable chairs at their ends, and well spiked with 6-inch wrought-iron spikes; to transversely plank the entire space between the rails and tracks with three by twelve inches milled pine, and to place along the two outer sides of the tramways, throughout this route, close to the stringer and on a level with the top of the rail, one plank not less than three by twelve in dimension, and to keep its tracks in good order and condition.

86 Relator alleges that the defendant has violated said obligations, and, although often requested, refuses to keep the streets through which its tracks pass, the bridges and intersections, and the planking on said streets in good condition; to provide proper drainage and culverts; to use flat rails; to plank upon unpaved streets the space between the lines of the tracks and the gutters of the streets; to plank a required level with the top of the rail where there are double tracks, as more fully appears from the report of the city surveyor and bill of particulars, annexed and made part of the petition.

Relator prays that a writ of mandamus issue commanding the defendant to specially perform the duties recited herein, and in the report of the city surveyor and bill of particulars, and all matters and things which under the contracts and by law it is obligated to do.

The defendant, for return to the rule to show cause why the writ of mandamus should not be made peremptory, excepts to the petition, and pleads in substance that the relator's petition discloses no cause of action; that the relief sought cannot be had by any means of the writ of mandamus; that the rights, obligations, and remedies assumed by the parties to the contracts out of which this proceeding arises must be regulated and interpreted according to the laws in force at the time said contracts were made; that if the relator contends that this proceeding by mandamus is authorized by act No. 133 of the acts of the Legislature of Louisiana of the session of 1888, then defendant contends that said act is null and void as in violation of articles 11, 46, and 48 of the constitution of the State of Louisiana; that even if constitutional the law can have no retroactive effect and change the right of parties entered into prior to its passage; if so, it violated article 1, sec. 9, No. 3, and sec. 10, No. 1, of the Constitution of the United States.

87 If the foregoing plea and exception be overruled — pleads that there was no proper and legal demand made upon it or

putting in default as required by the contracts and by the law, and without allegation and proof of such default this suit cannot be maintained; that this action is premature, defendant not having been notified, as required by its contracts, by the commissioner of public works of the city to make the repairs stipulated in its contracts or mentioned in relator's petition, and which want of notification by said officer it specially pleads.

Defendant further pleads and avers, in the event of its exceptions being overruled, that it has at all times complied with all of its just obligations and duties and with all demand for repairs and improvements made upon it according *with* the terms of its contracts, and that its tracks, with the bridges and roads through which the same pass, is in proper condition. Act 133 of 1888 is relied upon by the relator to maintain her right to compel by mandamus the performance of the obligations contracted by the defendant.

The provisions of said act are:

"That in all cases where any corporation has heretofore contracted with or may hereafter contract with, or shall be otherwise legally bound to any parish or municipal corporation in this State with reference to the paving, grading, repairing, reconstructing, or care of any street, highway, bridge, culvert, levee, canal, ditch, or crossing, and shall fail or neglect to perform said contracts or obligations, the said parish or municipal corporation or any officer thereof shall have the right to proceed by a writ of mandamus to compel the performance of said contracts or obligations or any part thereof, which writ of mandamus shall be made returnable in five days; shall be tried by preference over all other cases, without a jury, in vacation as well as in term time."

88 Relator is a municipal corporation, and the defendant is a private corporation. They have contracted with reference to the subjects mentioned in this act.

Considering the allegations of relator's petition, together with act 133 of 1888, the court is of the opinion that relator's petition does not disclose a cause of action, and defendant's exception is therefore overruled.

The provisions of act 133 of 1888 are clear and explicit. The relief prayed for can be obtained by the means of the writ of mandamus unless said act is unconstitutional, null, and void, as is claimed by the defendant.

Defendant's exception that the rights, obligations, and remedies assured by the parties to the contracts must be regarded and interpreted according to the laws in force at the time they were entered into is substantially the same as the exception that the act is unconstitutional, null, and void. Defendant contends that act 133 of 1888 is null and void, because it purports to take defendant's property without due process of law, thereby violating article 11 of the constitution of the State.

Article 11 is as follows:

"All courts shall be open, and every person for injury done
89 him in his rights, lands, goods, person, or reputation shall

have adequate remedy by due process of law and justice administered without denial or unreasonable delay."

In the act ample provision is made for the trial of the contestation before a court of competent jurisdiction for bringing the party against whom the proceeding is had before the court and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defense; for the deliberation and judgment of the court; for an appeal from the judgment rendered to the highest court of the State and for hearing and judgment there.

The remedy provided is speedy, but it can only be enforced by means of orderly proceedings in a court of competent jurisdiction, in accordance with the rules and forms established for the protection of parties.

These are the rights article 11 of the constitution guarantees. The act in no manner violates them. It does not purport to take defendant's property without "due process of law."

Kennard *vs.* Louisiana, 92 U. S., 480; 96 U. S., 97; 118 U. S., 574.

Defendant contends that said act is null and void because
90 it violates article 46 of the constitution of the State, in this, that it is a special law, the purpose and effect of which is to provide and change the method for collection of debts or enforcing judgments in a particular class of cases.

If not a special law prohibited by said article 46 it is a special law in the sense of article 48 of said constitution, and notice of intention to pass such law should have been given and the fact recited in the body of the act, which was not done.

Article 46 is as follows:

"The 'General Assembly' shall not pass any local or special law on the following specified objects: * * * Regulating the practice or jurisdiction of any court or changing the rules of evidence or inquiry before courts or providing or changing methods for the collection of debts or the enforcement of judgements or prescribing the effect of judical sales."

Article 48 reads as follows:

No local or special law shall be passed on any subject not enumerated in article 46 of this constitution unless notice of the intention to apply therefor shall have been published without cost to the State in the locality where the matter or thing to be effected may be situated, which notice shall state the substance of the contemplated law and shall be published at least thirty days prior to the
91 introduction into the General Assembly of such bill and in the manner provided by law for the advertisement of judicial sales. The evidence of such notice, having been published, shall be exhibited to the General Assembly before such act shall be passed, and every such act shall contain a recital that such notice has been given. Act 133 of 1888 is not an act for the collection of debts. The word debt is not found in the title or body of the act. A debt in its ordinary signification means an obligation to pay money. It means in law a sum of money due by certain and express agreement.

(Bouvier.) Said act is an act to compel corporations to perform special obligations assured by them. Obligations in its general sense and most extensive sense is synonymous with duty. (Bouvier.)

The framers of the constitution may have understood the words they have used in their ordinary signification, and when prohibiting the Legislature from passing any local or special law changing the method of "collecting debts" they meant debts or money collectible, not obligations or duties to be performed.

Nor does it change the methods for enforcing judgments. All that the act provides is that a private corporation failing to execute a judgment ordering it to do specified work which it has contracted to do for a municipal or parish corporation a writ of distringas shall issue. The writ of distringas is an old remedy for the
92 execution of judgments ordering the doing of something specified in it. It existed long before the passage of the act.

C. P., art. 636.
C. C., art. 1927.

The constitution contains two articles on the subject of local and special laws—article 46, which prohibits peremptorily such legislation on the subjects specified, and article 48, which forbids the same on subjects not enumerated in article 46 unless after publication of an intention to apply for the passage thereof. A moment's reflection satisfies the mind that the intention to apply alluded to can only mean that of private individuals seeking some private persons or property within a certain locality.

An act is general within the meaning of the constitution which in its subjects relate to all the people of the State or their property, though its operation be not equally applicable to all the parts of the State. Local acts are such as are confined to the persons and property both of specific locality.

35 A. R., 1143.

The Legislature has the right to make particular laws for different classes of its citizens. It may make laws for married women, for minors, bankers or traders, private individuals or corporations. It may classify corporations, and has done so (art. 429, C. C.), into
93 political and private corporations. It may give a lien to one class of corporations or laborers and not to another. It may divide the objects of taxation into different classes, providing one mode of taxation for natural persons and another mode for corporations. All that the law requires is that they shall be general in their application to the class to which they apply throughout the whole territory of the State.

36 A. R., 96.
10 A. R., 402.
Cooley's Constitutional Limitations, p. 390.

With this interpretation of the articles of the constitution and by these rules, whether the act is a local and special law in violation of articles 46 & 48 of the constitution, and therefore void, must be determined.

The act relates to any corporation in the State which may have heretofore contracted with or shall hereafter contract with or be otherwise legally bound to any parish or municipal corporation in this State to perform certain specified work in any parish or municipality in the State. The remedy by mandamus is conferred upon all the political corporations in the State to compel all private corporations in the State to comply with certain contract obligations. It does not confer this right upon any one or set of political corporations.

It does not apply solely to contract work to be performed in
94 a specific locality. It created no odious or unjust discrimination against any one or set of private corporations; nor does it separate any one private corporation from its class and impose upon it peculiar rules. It treats all private corporations having certain contracts with all parish and municipal corporations exactly alike. The act does not impose upon private corporations having contracts with political corporations heavier obligations than on private individuals having the same contracts. True it gives to a political corporation a more summary remedy to enforce private corporations to perform their obligations than it gives to enforce a private individual to perform alike obligations. But they are not in the same class, and the law is uniform in its operations to the class into which the Legislature, for the purposes of legislation, has deemed proper to divide the inhabitants of the State.

The act is not that of a private individual for the benefit of property within a certain locality. No notice was required.

Defendant excepts and pleads that if the act is valid under the laws and constitution of the State it can have no retroactive effect or change the rights of the parties to contracts entered into prior to its passage. That to attribute to it such effect would impair the obligations of the contracts, in violation of art. 1, section 10, No. 1, and sec. 9, No. 3, of the Constitution of the United States.

These sections of the Constitution prohibit State legislation
95 impairing the obligations of contracts. The act does not impair any of the obligations of defendant's contract. It does not require it to pay one cent more or do any work in addition to that stipulated in its contract.

It certainly does not change any remedies of the defendant had when the contracts were entered into to compel the relator to comply with her obligations due to it. It simply extends and gives to relator a pre-existing remedy: "Whatever belongs to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract."

1 How., 316.
96 U. S., 73.
13 Wallace, 71.
12 L., 352.
6 Rob., 309.

The exceptions that the act is null and void and the exception that the contract must be interpreted and enforced by the laws in existence at the time are overruled.

Defendant excepts and pleads the want of proper and legal demand; that the suit is premature, because no demand has been made upon it by the commissioner of public works.

The defendant was notified by Gen. G. S. Beauregard, the former commissioner of public works, in writing and in the words of the contracts, immediately to commence and without delay complete all the repairs necessary in accordance with the charter and ordinances governing the building and continuation of its road. It
96. was then summoned before a special committee of the city council and appeared through its president. The president of the company examined the contracts with the city's committee and contended that defendant had complied with its obligations. He did not claim that defendant would not comply, because no demand has been made. It is proved when called upon by said committee to comply with its contracts defendant refused.

Thereupon relator instructed its attorney to bring suit to *compare* a compliance.

It is contended that a demand should have been made through the present commissioner of public works. One demand through a former officer had been made which was met with no response. This was sufficient.

A formal demand in writing received no attention and oral demand — with a refusal. If under the law placing default was necessary a question of evidence renders it not necessary for the court to decide. This was all that could be required.

A more specific demand showing exactly what street was required to be paved or planked, tracks placed in order, and bridges repaired before a mandamus can issue cannot be required when the defendant, in answer to a demand, claimed that it had fulfilled its obligations. Whether it has done so or not is the subject-matter in
97 controversy in this suit and must be decided on its merits; nor is it a defense under the facts proved that the committee of the city council was not the proper channel through which the demand should have been made. The city council under relator's charter had the right to make the demand and act by committee composed of some of its members.

The exceptions are overruled.

On the merits.

The evidence is conclusive that defendant contracted with relator as alleged in the petition.

That defendant has failed to comply with its contracts, that the work and repairs detailed in the report of the city surveyor are included in its contracts, and that defendant has failed and neglected to do said work and make said repairs.

Judgment is therefore rendered in favor of the relator against the defendant, in accordance with this opinion and as prayed for in relator's petition.

The period in which the work can be reasonably done and the

time fixed in which it is ordered to be done is within three months from the rendition of the judgment herein.

(Signed) F. D. K.

98 STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.

No. 2709.
Civil District Court,
Division "B."

Judgment.

This cause having been taken under advisement for the reasons assigned in the written opinion herein filed, and the law and evidence being in favor of relator—

It is ordered, adjudged, and decreed that there be judgment in favor of relator and against the respondent, making the mandamus herein issued peremptory, and accordingly that the respondent do commence and at once make and perform and complete within three months from the date of the rendition of this judgment the following work and repairs, to wit:

On the Levee and Barracks line.

Repair the iron bridges on Peters and Levee streets at the intersections of Conti and St. Louis streets and at other defective places on said Peters and Levee streets. Pave on all the unpaved streets through which the Levee and Barracks line runs, to wit,
99 North Peters street from Canal street to Lafayette avenue, Lafayette avenue from North Peters to Royal street, Royal street from Lafayette avenue to Bartholomew, Bartholomew from Royal to the right-hand track on Dauphine, Dauphine street from Batholomew to Coffin's lane, Levee street from Coffin's lane to Delery street, Delery from Levee street to Dauphine street, Dauphine street from Delery to Poland, Poland from Dauphine to Rampart, Rampart from Poland to Mazant, Mazant from Rampart to Chartres, Chartres from Mazant to Lafayette avenue, Lafayette avenue from Chartres to North Peters, North Peters from Lafayette avenue to Canal, or wherever said above-recited streets and portions of streets are now unpaved or unplanked, the spans between the lines of the tracks and the gutters of the streets, with yellow-pine planks three inches thick, laid on stringers four inches thick by eight inches wide. Straighten and enlarge the existing culverts and build additional culverts across Dauphine street, so as to make proper drainage across Dauphine below Poland street.

Camp and Prytania line.

Repair plank road in the block below Toledano street and Prytania street. Pave on all unpaved streets through which the Camp and Prytania line runs, to wit, Prytania from Poeyfarre to Toledano,
Poeyfarre from Camp to Magazine, wherever said streets and
100 portions of streets are now unpaved or unplanked, the space between the lines of the tracks and the gutters of the streets,

with yellow-pine planks three inches thick, laid on stringers four inches thick by eight inches wide.

Camp and Magazine line.

Repair the plank road at the upper end of the line on Magazine street.

Rampart and Dauphine line.

Repair bridges at the intersection of Dauphine and Marigny and the bridge at Mandeville street. Repair the planking between the double tracks on Dauphine street below Poland street. Fill and repair road on either side of the single track on Dauphine street below Coffin's lane; also on Delery street from Dauphine street to the river. Pave on all unpaved streets through which the Rampart and Dauphine line runs, to wit, Rampart street from Canal to Esplanade, Dauphine from Esplanade to Poland, Rampart from Esplanade to Poland St., Poland street from Dauphine to Rampart, Dauphine from Poland to Coffin's lane, and Dauphin street from Coffin's lane to Delery street, wherever said streets or portions of streets are now unpaved or unplanked, the space between the lines of the tracks and the gutters of the streets, with yellow-pine planking three inches thick, laid on stringers four inches thick by eight inches wide.

Canal, Metairie road, and Bayou St. John line.

101 Repair the planking between the tracks and rails and pave on all unpaved streets through which the line runs, to wit, Canal street from Carondelet street to Metairie road, Metairie road from Canal to New Canal, and on Metairie ridge from New Canal to Bayou St. John, wherever said streets or portions of streets are now unpaved or unplanked, the space between the tracks and the gutters of the streets, with yellow-pine planking three inches thick, laid on stringers four inches thick by eight inches wide.

Esplanade and Bayou Bridge line.

Pave on all unpaved streets through which the line runs, to wit, Esplanade from Rampart to Bayou St. John, Esplanade from Levee to Rampart street, wherever the said streets or portions of streets are now unpaved or unplanked, the space between the tracks and the gutters of the streets, with yellow-pine planking three inches thick, laid on stringers four inches thick and eight inches wide.

New Orleans City and Lake railway line.

Repair the roadways on Canal street from curb to curb, including all gutters and canal bridges.

Extension of the Camp and Prytania line.

Repair intersections of Bordeaux, Peters, and Octavia streets, on up track, and at Aline, Delachaise, Amelia, Lower Napoleon, and Joseph streets, on the down track; also bridges at Amelia and Milan,

on the down track. Widen the roadways on the line of the
102 single track from Soniat to Joseph street and properly grade the road so as to allow free passage-way for vehicles; place 3 x 12 planks level with top rails where there are double tracks on the line and replace and renew 3 x 12 planks where there is a single track; provide additional drainage under the tracks of this line.

Camp and Magazine extension.

Repair intersections on this line on the down track of Peters, Belle Castle, Dufossat, Lyon, and Lower Napoleon streets, and also at Nashville avenue, Soniat and Belle Castle streets, on the up track; place 3 x 12 planks level with the top of the rails where there are double tracks on this line and replace and renew the 3 x 12 planks where there is a single track; provide additional drainage under the tracks of this line.

And it is further ordered that the respondent pay costs of this proceeding.

Judgment rendered November 11th, 1889.

Judgment signed November 26th, 1889.

(Signed) F. D. KING, *Judge.*

103 STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD CO.

No. 27049.
Civil District Court,
Division "B."

Motion for New Trial. Filed November 15th, 1889.

To the hon. the civil dist. court for the parish of Orleans, division "B," Hon. F. D. King presiding:

On motion of Buck, Dinkelspiel and Hart, attorneys for defendants, it is ordered that relator, The City of New Orleans, show cause on Friday, Nov. 22nd, 1889, why the judgment herein rendered on Monday, Nov. 11th, 1889, should not be set aside and a new trial granted for the reasons, to wit:

First. Said judgment is clearly contrary to the law and evidence and not responsive to the evidence.

Second. The court erred in holding that general complaint *and* the administrator of public works made about a year before the institution of the suit was a sufficient demand for putting in default for the purposes of this suit, or that under the conditions and circumstances proved no demand was necessary.

104 Third. There is error in finding of the court on each and every point raised as to the constitutionality of act 133, acts of 1888, on which this proceeding is based.

STATE *ex Relatione* CITY OF NEW ORLEANS *vs.* NEW ORLEANS CITY AND LAKE R'ROAD COMPANY.	No. 27049. Civil District Court, Division "B."

Rule for New Trial Submitted.

Extract from Minutes of November 23d.

Present: Hon. F. D. King, judge.

This rule came on to be heard—present, Chas. F. Buck, for plaintiff in rule; S. L. Gilmore, for defendant in rule—when, after hearing pleadings and argument of counsel, this rule was taken under advisement.

105

STATE *ex Relatione* CITY OF NEW ORLEANS *vs.* NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.	No. 27049. Civil District Court, Division "B."

Exception of Res Adjudicata. Filed November 25th, 1889.

And now into this honorable court, through undersigned counsel, comes the defendant, and, specially reserving all other defences urged by exception and answer hereinbefore made, now pleads to *all* so much of relator's petition and demand as pertained to the repair of roadways, crossings, bridges on streets bordering on "neutral grounds" where the tracks of defendant company are run, particularly as to all demands in regard to the roadways, bridges, and crossings on Canal street bordering either side of the neutral ground of said Canal street to the Metairie cemetery, the exception of the things adjudged averring and relating that said question as to the liability of the defendant company to maintain and keep in repair the roadways and bridges on Canal street—that is, on said roadways thereof—

106 was definitely and finally adjudged in favor of this defendant in the cause No. 20655, civil district court, entitled City of New Orleans, for the use of J. R. Connelly, *vs.* this defendant, which records, statements of facts on which the judgment was founded, and particularly the judgment of said court rendered on the 2nd day of May, 1889, and signed on the 8th of May, same year, now finally are part of this record as evidence hereinbefore offered.

Whereupon appearer prays that this exception of "*res adjudicata*" as to so much of relator's demand as seeks to compel the defendant company to put in repair and maintain in repair roadways, bridges, and crossings on the said roadways of Canal street on either side of the neutral ground from Claiborne street to the cemetery be maintained and said relator's suit in that regard finally dismissed.

And defendant prays for all general and equitable relief; and as in duty bound, &c.

(Signed) BUCK, DICKENSPIEL & HART, *Att'ys.*

107 *Opinion and New Trial Refused. Filed November 25th*, 1889.

CITY OF NEW ORLEANS
vs.
THE NEW ORLEANS CITY AND LAKE RAILROAD CO. } No. 27049. Division "B."

On application for a new trial.

Complaint is made to that portion of the judgment ordering defendant to keep in repair the roads on Canal, Rampart to Esplanade, and Esplanade to Broad street.

It is urged by the defendants that their tracks on Canal street are laid upon what is termed in various city ordinances, passed after the defendant had contracted with the city, as the "neutral ground."

That the proper interpretation placed upon the contract requires defendant to keep in repair only the neutral ground upon which its tracks are laid and that portion of the bridges between the neutral ground. The words of the contract are that "defendant should keep in good repair and condition from curb to curb the streets and bridges through which its tracks pass." This contract was made October 2nd, 1879.

108 The statement of facts in the case of Connolly *vs.* The City of New Orleans, in evidence in this case, shows the physical conformation of Canal street from its intersection with Claiborne street to its intersection with the Metairie ridge. In 1860 a canal occupied the space upon which the tracks of defendant are now laid.

There was a roadway for the passage of vehicles on each side of said canal, bordered on the opposite side by the banquette. The tracks of defendant were built upon a bridge or trestle over said canal, and remained so until the year 1873 or thereabouts, when the canal was filled up with earth. In order to do so the tracks were removed and placed on the earth on the borders of the canal. On June 3d, 1884, the city council of the city of New Orleans requested defendant to remove its tracks to the center of the neutral ground, meaning the surface formed by the filling of the former canal, which was done. When the contract was made, October 2nd, 1879, the physical conformation of Canal street and the manner in which the tracks were laid were well known to both of the contracting parties. In neither the ordinance nor the contract are the words "neutral ground" used. The contract does not say that defendant should have the right to lay its track on the neutral ground and keep that only in repair. It says that defendant shall have the right of laying a double track on Canal street from Carondelet to Metairie road and keep the street through which it passes in good order from curb to curb. What is known as the neutral ground on Rampart and Esplanade streets was also well known to the contracting parties when

109 the contract was entered into. No mention is made of the neutral ground in either ordinance or contract. The — is given defendant to lay a double track on Rampart street from Canal to Esplanade street and a double track on Esplanade street from

Levee to Rampart street and from Rampart street to Bayou St. John, subject to terms and conditions. One of the considerations is that the defendant shall keep the paved and unpaved streets through which said tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb. In order to make the contract mean what is contended for by the defendant the court would have to set aside the plain language of the contract, which is clear and explicit and expresses the intent of the parties, and resort to a rule of interpretation allowed only when the intent of the parties is doubtful. C. C., art. 1945, 1956.

To decide that when the right to lay the tracks on Canal, Rampart, and Esplanade streets was given the contracting parties did not mean streets, but the neutral ground in the centre of the streets; to decide that when the defendant obligated itself to keep in repair the streets through which said tracks passed as stated in the contract it did not mean to obligate itself to keep in repair the streets "through" but meant "upon" or "on" which the tracks were laid and passed, the court is of the opinion that the contract speaks
110 for itself and in plain language expresses the intent of the parties. It cannot, therefore, resort to rules of interpretation granted only when the intention is not clearly expressed in the contract. The court does not consider that the fact that the neutral ground forms no part of the street proper in any manner affects defendant's liability. The neutral ground runs through the middle of the street. It is not private property. It has paved and unpaved streets on both sides thereof, through which defendant's tracks pass. The city could require and the defendant could contract to keep in repair not only these streets but streets in any portion of the city as one of the considerations paid for the franchise provided. The intent of the parties was explained in the contract.

While appreciating fully the force of the argument of counsel for defendant the court considers that it can look only at the contract. As that is plain, and as it is the law which the parties thereto have made for themselves, the court cannot go behind its plain language or seek an interpretation thereof by considering its pecuniary effect upon the defendant or seek the intent of the parties when they made it by the manner in which they have heretofore executed it, but the court must enforce it as expressed.

New trial refused.

New Orleans, La., Nov. 25th, 1889.

111 *New Trial Refused.*

Extract from the Minutes of Nov. 25, 1889.

Present: Hon. Fred. D. King, judge.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY AND LAKE R. R. Co. } No. 27049. Division "B."

For the reasons assigned in the written opinion of the court this

day delivered it is ordered that the rule for a new trial filed here be now denied and a new trial refused.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
N. ORLEANS CITY AND LAKE R'ROAD COMPANY.
No. 27049.
Civil District Court, Division "C."

Exception of Res Adjudicata Overruled.

Extract from Minutes of November 26th, 1889.

Present: Hon. F. D. King, judge.

112 For the reasons orally assigned it is ordered that the exception of *res adjudicata* filed by defendant be overruled.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY.
No. 27049.
Civil District Court, Division "B."

Motion for Appeal.

Extract of Minutes of December 6th, 1889.

Present: Honorable F. D. King, judge.

On motion of Buck, Dinkenspiel and Hart, attorneys for defendant, and for the reasons on file, it is ordered by the court that mover be allowed a suspensive appeal from said judgment, returnable to the honorable the supreme court of the State of Louisiana on the first Monday in January, 1890 (there not being sufficient time to complete the transcript by the third Monday of December, the next regular return day), upon mover furnishing bond in the sum of five hundred dollars, conditioned according to law, with good and solvent security.

113 STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY
No. 27049.
Civil District Court, Division "C."

Motion of Appeal. Filed Dec. 6th, 1889.

On motion of Buck, Dinkelspiel and Hart, attorneys for the defendant, and on suggesting to the court that it is informed and verily believes that there is error to its prejudice in the final judgment of this honorable court rendered against it and in favor of the relator, and that it is desirous of suspensively appealing therefrom—

It is ordered by the court that mover be allowed a suspensive appeal from said judgment, returnable to the honorable the supreme court of the State of Louisiana on the first Monday of January, 1890 (there not being sufficient time in which to complete the tran-

script by the third Monday of December, the next regular return day), upon mover furnishing bond in the sum of five hundred dollars, conditioned according to law, with good and solvent security.

114 *Bond of Appeal. Filed December 6th*, 1889.

Know all men by these presents that we, New Orleans City and Lake R. R. Co., as principal, and Jos. A. Walker, as surety, are held and firmly bound unto E. A. Luminais, clerk of the civil district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of five hundred dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seal and dated, in the city of New Orleans, on the sixth day of December, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-bounden New Orleans City and Lake R. R. Co. this day filed a motion of appeal from a final judgment rendered against it in the suit State *ex rel.* City of New Orleans *vs.* New Orleans City and Lake R. R. Co., No. 27049 of the civil district court for the parish of Orleans, on the 11th day of November, 1889, and signed on the 26th day of November, 1889:

Now, the condition of the above obligation is such that the above-bound New Orleans City and Lake R. R. Co. shall prosecute said appeal and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of the sale of its estate, real or personal, if it be cast in the appeal; otherwise that the said Jos. A. Walker, surety, be liable in its place.

115 (Signed) J. A. WALKER, *President.* [SEAL.]
(Signed) J. A. WALKER. [SEAL.]

115 Signed, sealed, and delivered in the presence of—
(Signed) W. O. HART.

STATE *ex Relatione* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY & LAKE R. R. CO.
} No. 27049. Civil District Court, Division "B."

Agreement. Filed Jan'y 9th, 1890.

In the Civil District Court.

It is hereby agreed between the undersigned counsel that—

1st. That the following ordinances of the city of New Orleans, to wit, Nos. 2481, 541, 523, and 600, the reports of the special committee of the city council, dated May, 1889, and the report of the proceedings of the council, dated May, 1889, offered in evidence by the counsel for the city, be not copied into the transcript, but that in lieu thereof the printed copies, duly certified, of said ordinances and said reports filed herein be included in the transcript and

116 used on appeal in the supreme court.

2nd. That the record of the suit of New Orleans City R. R.

Co. *vs.* Crescent City R. R. Co., No. 9239 of the U. S. circuit court, eastern district of Louisiana, offered in evidence by the city's counsel, be not copied in the transcript, but that in lieu thereof the transcript of the proceedings in said suit, made by and under the seal of the clerk of said U. S. circuit court and filed herein, are included in the transcript and used for the purposes of appeal in the supreme court.

3d. That the copy of the New Orleans Picayune, dated April 6th, 1889, made part of a bill of exception reserved by counsel for city, be not copied in the transcript, but be included therein and used on appeal in the supreme court.

4th. That the reports — L. W. Brown, assistant surveyor, and of Wm. Pierce, general superintendent of the department of public works, made part of bills of exception reserved herein by counsel for the city, be used in the original on appeal.

5th. Printed pamphlet containing charter, ordinances, and contracts between plaintiff and defendants shall be annexed to transcript, and all documents, ordinances, &c., contained therein shall be so used in original in the supreme court, provided they have been offered in evidence or are enclosed in some agreement that they shall be so considered.

6th. Ordinances referred to and offered, as contained in Jewell's Digest, shall not be copied, but shall be used from the printed volume.

117 7. Of the record No. —, City of N. Orl's, for use of Connolly, *vs.* this defendant, the pleadings, judgment, statement of facts, and statement of his honor Judge Monroe only shall be copied.

(Signed) BUCK, DINKELSPIEL AND HART, *For Def't.*

(Signed) SAM'L L. GILMORE, *Ass't City Att'y.*

STATE *ex Relatione* CITY OF NEW ORLEANS *vs.* NEW ORLEANS CITY AND LAKE RAILROAD CO. — No. 27049. Civil District Court, Parish of Orleans, Division "B."

Record No. 20655, Entitled Robert J. Conolly vs. N. O. City and Lake Railroad Company, Offered in Evidence by Defendant.

Petition. Filed March 31st, 1887.

To the honorable the civil district court for the parish of Orleans:

The petition of Robert J. Conolly, a resident of the parish of Orleans, in the State of Louisiana, with respect represents that the New Orleans City and Lake Railway Co., a private corporation in-

118 corporated under the laws of the State of Louisiana, and of which Joseph Walker is the president, also a resident of the parish of Orleans, is justly and legally indebted unto your petitioner in the full sum of four hundred and fifty-two dollars $\frac{17}{100}$, with eight per cent. per annum interest thereon from demand, for this, to wit:

That Robert J. Conolly, contractor for repairing streets through which the various railways run, as per ordinance of the city council, No. 1555, passed Dec. 2nd, 1885, has contracted certain work under his contract, and that there is now due him for rebuilding the bridge over Hagan avenue, on the south side of Canal St., the sum of four hundred and fifty-two dollars and $\frac{17}{100}$; that for the rebuilding of said bridge it was necessary to furnish and place in position 12,919 feet of lumber at 3½ cents per foot, making a cost of $452.17.

Your petitioner represents that by virtue of ordinance No. 1555, council series, adopted by the council of the city of New Orleans on the 2nd day of December, A. D. 1888, a duly certified copy of which ordinance is hereto annexed and made — hereof, your petitioner entered into a written contract with the Hon. Joseph Valsin Guillotte, mayor of the city of New Orleans, acting in his official capacity and being specially authorized and empowered by the aforesaid ordinance, and in confirmation of sale and adjudication made by the Hon. Joseph N. Hardy, comptroller of the city of New Or-
119 leans, on the 13th day of October, 1885, did, by notarial act passed before Joseph D. Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly qualified and commissioned and official notary of the city of New Orleans, bargain, sell, and confirm unto the aforesaid Robert J. Conolly the contract for the repairing of streets through which the various street railroads pass, as per specifications on file in the office of the city surveyor, a copy whereof is hereto annexed with the aforesaid notarial act and made a part hereof.

Your petitioner further represents that the said amount is due and that, notwithstanding amicable demand of payment has been made, *that* the said corporation, through its president, neglects and refuses to pay same. Wherefore your petitioner prays, the premises being duly considered, that the said N. O. City and Lake Railway Company, through its president, be cited to appear and answer the demands of this petition, and that after due process of law he have and recover judgment against the said N. O. City and Lake Railway Company, through its president, for the sum of four hundred and fifty-two dollars and $\frac{17}{100}$, with interest from demand, at the rate of 8% per annum, until paid. Petitioner further prays for costs of suit and for general relief.

(Signed) L. O'DONNELL.

120 *Exception. Filed April 21st*, 1887.

And now into this honorable court, through undersigned counsel, comes defendant and excepts to the petition of plaintiff on the ground that same discloses *in* cause of action against it.

Wherefore respondent prays to be herein dismissed with costs, and for general relief.

(Signed) BRAUGHN, BUCK,
DINKELSPIEL & HART, *Att'ys.*

Judgment on Exception.

Extract from Minutes of June 10th, 1887.

Present: Hon. F. A. Monroe, judge.

The exception herein came up on this day—L. O'Donnell, Esq're, for plaintiff; W. O. Hart, Esq're, for defendant—and, after hearing pleadings and counsel and for the reasons orally assigned, the court considering the same well founded in law—

It is ordered, adjudged, and decreed that said exception herein filed by the defendant, The New Orleans City and Lake Railroad Co., be maintained and plaintiff's suit dismissed at his cost.

121 *Rule for New Trial. Filed June 14th, 1887.*

On motion of L. O'Donnell, att'y for plaintiff, and on suggesting to the court that there is error in the judgment rendered herein and he believes himself aggrieved thereby—

It is ordered that defendant do show cause on the 17th day of June, 1887, why the judgment granted in this case should not be set aside and dissolved and plaintiff be allowed to file his supplemental and amended answer.

Wherefore he prays that said judgment be set aside and plaintiff be allowed to file his supplemental and amended petition.

Judgment on Rule.

Extract from Minutes of June 17th, 1887.

Present: Hon. F. A. Monroe, judge.

By consent of counsel it is ordered that the rule herein fixed for this day be made absolute, and that a new trial be granted, as therein prayed for.

Supplemental and Amended Petition. Filed November 23d, 1887.

The supplemental and amended petition of the City of New Orleans, for the use and benefit of Robert J. Conolly, a resident
122 of the parish of Orleans, in the State of Louisiana, with respect represents that the New Orleans City and Lake Railroad Company, a private corporation incorporated under the laws of the State of Louisiana, and of which Joseph Walker is the president, also a resident of the parish of Orleans, is justly and legally indebted unto your petitioner in the full sum of four hundred and fifty-two dollars $\frac{15}{100}$, with eight per cent. per annum interest thereon from demand, for this, to wit:

That Robert J. Conolly, contractor for repairing streets through which the various railways run, as per ordinance of the city council, No. 1555, passed Dec. 2, 1885, has constructed certain work under his contract, and that there is now due him for rebuilding the bridge over Hagan avenue, on the south side of Canal St., the sum

of four hundred and fifty-two dollars and $\frac{17}{100}$; that for the rebuilding of said bridge it was necessary to furnish and place in position 12,919 feet of lumber at 3½ cts. per foot, making a cost of $452.17.

Your petitioner further represents that by virtue of ordinance No. 1555, council series, adopted by the council of the city of New Orleans on the 2nd day of December, A. D. 1885, a duly certified copy of which ordinance is hereto annexed and made part hereof, your petitioner entered into a written contract with Hon. Joseph Valsin Guillotte, mayor of the city of New Orleans, acting in
123 his official capacity and being specially authorized and empowered by the aforesaid ordinance, and in confirmation of sale and adjudication made by the Hon. Joseph N. Hardy, comptroller of the city of New Orleans, on the 13th day of October, 1885, did, by notarial act, passed before Joseph D. Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly qualified and commissioned and official notary of the city of New Orleans, bargain, sell, and confirm unto the aforesaid Robert J. Conolly the contract for the repairing of streets through which various street railroads pass, as per specifications on file in the office of the city surveyor, a copy whereof is hereto annexed with the aforesaid notarial act and made a part hereof.

Your petitioner further represents that the said amount is due and that, notwithstanding amicable demand has been made, *that* the said corporation, through its president, neglects and refuses to pay same.

Wherefore your petitioner prays, the premises being duly considered, that the said N. O. City and Lake Railway Company, through its president, be cited to appear and answer the demands of this petition, and that after due process of law he have and recover judgment against the said N. O. City and Lake Railway Company, through its president, for the sum of four hundred and fifty-two dollars and $\frac{17}{100}$, with interest from demand at the rate of 8 % until paid.
124 Petitioner further prays for costs of suit and for general relief.

(Signed) L. O'DONNELL, *Att'y.*

Order.

Let this supplemental and amended petition be filed according to law.

New Orleans, November 23d, 1887.

(Signed) F. A. MONROE, *Judge.*

Exception. Filed November 23d, 1887.

And now into this honorable court, through undersigned counsel, comes the defendant and excepts to the supplemental and amended petition of plaintiff on the ground that same discloses *in* cause of action against respondent. Wherefore respondent prays to be hence dismissed with costs, and for general relief.

(Signed) BRAUGHN, BUCK,
DINKELSPIEL AND HART.

125 *Second Supplemental and Amended Petition. Filed Dec. 23d, 1887.*

To the hon. the civil dist. court for the parish of Orleans:

The supplemental and amended petition of the City of New Orleans for the use and benefit of Robert J. Connolly, a resident of the parish of Orleans, in the State of Louisiana, with respect represents—

That the New Orleans City and Lake Railway Co., a private corporation incorporated under the laws of the State of Louisiana, and of which Joseph Walker is the president, also a resident of the parish of Orleans, is justly and legally indebted unto your petitioner in the full sum of four hundred and fifty-two dollars $\frac{17}{100}$, with eight per cent. per annum interest thereon from demand, for this, to wit:

That Robert J. Conolly, contractor for repairing streets through which the various railways run, as per ordinance of the city council No. 1555, passed Dec. 2, 1885, has constructed certain work under his contract, and that there is now due him for rebuilding the bridge over Hagan avenue, on the south side of Canal St., the sum of four hundred and fifty-two dollars and $\frac{17}{100}$; that for the rebuilding of said bridge it was necessary to furnish and place in position 12,919 feet of lumber at $3\frac{1}{2}$ cts. per foot, making a cost of $452.17.

Your petitioner further represents that by virtue of ordi-
126 nance No. 1555, counsel series, adopted by the council of the city of New Orleans on the 2nd day of December, A. D. 1885, a duly certified copy of which ordinance is hereto annexed and made part hereof, your petitioner entered into a written contract with the Hon. Joseph Valsin Guillotte, mayor of the city of New Orleans, acting in his official capacity, and being specially authorized and empowered by the aforesaid ordinance and in confirmation of sale and adjudication made by the Hon. Joseph N. Hardy, comptroller of the city of New Orleans, on the 13th day of October, 1885, did, by notarial act passed before Joseph D. Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly qualified and commissioned & official notary of the city of New Orleans, bargain, sell, and confirm unto the aforesaid Robert J. Connolly the contract for the repairing of streets through which various street railroads pass, as per specifications on file in the office of the city surveyor, a copy whereof is hereto annexed with the aforesaid notarial act and — a part thereof.

Petitioner further represents that the aforesaid N. O. City and Lake Railroad Company, purchasers of said franchise and right of way, as per ordinance or resolution No. 6148, A. S., did bind themselves to the following terms and conditions, to wit: The purchasers shall be bound to keep the paved and unpaved streets through which said track pass as well as all the bridges on said streets, in
good repair and condition from curb to curb during the
127 continuance of their privilege and right of way.

Petitioner further represents that due notice was served as required by the contract and no attention was paid to the notice to repair the bridge, and thereupon the administrator of improvements

notified the said Robert J. Connolly to make the necessary repairs under his contract.

Your petitioner further represents that the said amount is due, and, notwithstanding amicable demand of payment has been made, that the said corporation, through its president, neglects and refuses to pay same.

Wherefore your petitioner prays, the premises being considered, that the said N. O. City and Lake Railway Company, through its president, be cited to appear and answer the demands of this petition, and that after due process of law he have and recover judgment against the N. O. City and Lake Railway Company, through its president, for the sum of four hundred and fifty-two dollars and $\frac{17}{100}$, $452.17, with interest from demand, at the rate of 8 % per annum, until paid.

Petitioner further prays for costs and for general relief.

(Signed) L. O'DONNELL, *Att'y.*

Order.

Let the supplemental and amended petition be filed according to law.

New Orleans, Dec. 22nd, 1887.

(Signed) F. A. MONROE, *Judge.*

128 *Judgment on Exception.*

Extract from Minutes of Jan'y 6th, 1888.

Present: Hon. F. A. Monroe, judge.

By consent of counsel in open court it is ordered that defendant's exception be maintained, with leave to plaintiff to amend his pleadings.

Exception. Filed Jan'y 2nd, 1888.

And now into this honorable court, through the undersigned counsel, comes the defendant and peremptorily excepts to the further prosecution of this cause on the ground that the petition and supplemental petitions of plaintiff disclose no cause of action against it.

Wherefore respondent prays that this exception may be maintained and plaintiff's suit dismissed with costs, and for general relief.

(Signed) BRAUGHN, BUCK,
DINKELSPIEL & HART, *Att'ys.*

Judgment on Exception.

Extract from Minutes of Feb'y 17th, 1888.

Present: Hon. F. A. Monroe.

The exception to plaintiff's supplemental petition herein came up on this day—L. O'Donnell, Esq., for plaintiff; W. O. Hart,
129 Esq., for defendant—and, after hearing pleadings, evidence, and counsel, and for the reasons orally assigned by the court,

it is ordered that defendant's exception be maintained, with the leave to plaintiff to amend his pleadings as herein required.

Exception. Filed March 12th, 1888.

And now into this honorable court, through undersigned counsel, comes the defendant, and, to the third supplemental petition of plaintiff, it opposes the peremptory exception of no cause of action.

Wherefore respondent prays to be hence dismissed with costs, and for general relief.

(Signed) BRAUGHN, BUCK,
DINKELSPIEL & HART, *Att'ys.*

Third Supplemental and Amended Petition. Filed March 14th, 1888.

To the honorable the judges of the civil district court for the parish of Orleans:

The supplemental and amended petition of the city of New Orleans, a political corporation created by act No. 20 of the Legis-
130 & 131 lature of 1882, for the use and benefit of R. J. Connolly, respectfully shows—

That by the contract evidenced by authentic — and passed before G. Legardeur, Jr., a notary public in this city, October, 1879, defendant agreed, for the consideration expressed in said act, to keep in repair under the directions of the administrator of improvements and city surveyor the streets and bridges through which its lines of railway passed; that the street upon which is situated the bridge described in the original petition herein is a street through which pass some of the lines of railway of defendant; that said bridge is located in a *store* through which said lines of railway pass, to wit, Canal street, on the Canal Metairie road or Canal Matairie road and Lake line.

That defendant was duly and seasonably notified to make the repairs described in the original petition and other supplemental petitions herein by administrator of improvements and city surveyor, but that defendant neglected and refused to make said repairs which were necessary, reasonable, and such as defendant was bound to make under said contract.

All is now fully shown by reference to the ordinances and contracts set forth in the pamphlet filed herewith as part hereof.

Wherefore petitioner prays that this supplemental and amended petition be filed; that defendant be duly cited to answer
132 the same; that after due proceedings there be judgment in favor of petitioner, for the use and benefit of Robert Connolly, for the sum of four hundred and fifty-two $\frac{17}{100}$ dollars, to be at once turned over and delivered by petitioner to said Connolly as soon as received by petitioner, and for costs and for general relief.

(Signed) LAWRENCE O'DONNELL,
Ass't City Att'y.

(Signed) B. K. MILLER, *Of Counsel.*

Order.

Let this supplemental and amended petition be filed *and* according to law.

N. O., M'ch, 1888.

(Signed) F. A. MONROE, *Judge.*

Judgment on Exception.

Extract from Minutes of May 25th, 1889.

Present: Hon. F. A. Monroe, judge.

The exception to plaintiff's supplemental petition herein came up this day—Branch K. Miller, Esq., for plaintiff; W. O. Hart, Esq., for defendant—and, after hearing pleadings and counsel, and for the reasons orally assigned, the court considering the law to be
133 with plaintiff, it is ordered that defendant's exception be overruled at *his* cost.

Answer. Filed June 11th, 1888.

And now again in this hon. court, reserving the benefit of all exceptions hereinbefore filed, appears the defendant and, for answer to plaintiff's original and supplemental petitions or so much thereof as under the various judgments on exceptions filed is before the court to be answered unto, denies generally and specially all the allegations therein contained; denies specially the right of plaintiff, R. J. Connolly, to stand in judgment here or maintain a suit on the cause of action as by him prescribed.

And, further answering, defendant pleads and avers that in no event can it be made liable herein, because under its contract with the city of New Orleans it is not bound to repair or keep in repair the bridges on Canal street proper over the canals and was and is not bound to repair the bridge for which this suit was brought.

But even if said bridge is embraced in the terms of said contract plaintiff cannot recover, because this defendant was not properly notified or put in default and the work was done without giving respondent an opportunity to secure it at lowest cost possible.

In any event the charge is excessive, grossly exaggerated, and the work as completed could have been done for a much lower price, and respondent can under no circumstances be compelled to
134 pay more than its just value and is not bound in that regard by the pretended contracts by which a price was fixed as between plaintiff and the city.

Wherefore defendant prays to be hence dismissed with costs, and she prays for such legal and equitable aid, remedy, and relief as the nature of the case may require and law and equity permit; and as in duty bound, &c.

(Signed) BRAUGHN, BUCK,
DINKELSPIEL & HART, *Att'ys.*

Judgment on Merits.

The trial of the case was resumed on this day—present, Messieurs L. O'Donnell and Branch K. Miller, for plaintiff, and Chas. F. Buck, Esq., for defendants—and, after hearing pleadings, evidence, and counsel, the court considering the law and the evidence to be in favor of defendants and against plaintiff, and for the reasons orally assigned, it is ordered, adjudged, and decreed that there be judgment in favor of the defendants, The New Orleans City and Lake Railroad Company, rejecting the plaintiff's demand and dismissing this suit at his cost.

Judgment rendered May 2nd, 1889.

Judgment signed May 8th, 1889.

(Signed) F. A. MONROE, *Judge.*

135 *Statement of Facts. Filed November 13th,* 1889.

Counsel for plaintiff and defendant, after due efforts, having failed to agree upon a statement of the facts proved on the trial of this case, and due request being made to that end, the court makes the following "statement of facts:"

By authentic act passed before J. D. Taylor, notary public, of date May 3d, 1886, and by authority of an ordinance of the first named the city of New Orleans contracted with Robert J. Connolly that the latter should repair all streets through which the various lines of street railways pass, as per specifications on file in the office of the city surveyor. The contract further stipulated that Connolly should in no event look to the city for payment for anything he did under it, but should receive payment under it from the respective railroad companies. The contract fixed a schedule of prices to be charged for work done under it, among — 3½ cents per foot, board measure, being allowed for building bridges. For fuller explanation and greater certainty a copy of said contract is made part of this statement.

That due demand was made upon defendant to do the work described in the petition by the authorities for that purpose designated in defendant's contract with the city of New Orleans of date
136 October 2nd, 1879, evidenced by authentic act passed before G. Legardeur, notary public; that by said contract it was stipulated that defendant should keep in good repair the streets and bridges through which its lines of railway passed. This, under his said contract, after due compliance with the formal requirements of both said contracts, Connolly rebuilt the bridge described in the petition and in the notices hereafter mentioned, at the corner of Hagan avenue and Canal streets, which spanned the Hagan avenue canal on the uptown side of Canal street at that point.

The physical conformation of Canal street from its intersection with Claiborne street to its intersection with the Metairie ridge was, in 1860, when defendant for the first time obtained permission to run its cars, *was* as follows: A canal occupied the space upon which

the tracks of defendant are now laid. There was a roadway for vehicles on each side of said canal, bordered on its opposite side by the banquette. The tracks of defendant were built upon a bridge or trestle-work over said canal, and remained so until the year 1873 or thereabouts, when the canal was filled up with earth, in order to do which the trestle supporting the railway was removed and the tracks were placed on the earth upon the borders of the canal. On June 3d, 1884, the council of the city of New Orleans passed a resolution requesting the defendant to remove its tracks from the position as described to the center of the neutral ground, meaning the surface formed by the filling up of the former canal.

137 This surface or space has been styled in several ordinances of the city as "neutral ground."

Defendant's railway on Canal street from Claiborne St. to the new canal could not be operated at a profit if its contract obligations upon which it is sued be construed as contended for by plaintiff. The contract of defendant with the city of New Orleans, of date October 2nd, 1879, evidenced by authentic act before G. Legardeur, Jr., notary public, of that date; the letters or notices of the commissioner of public works and city surveyor of the city of New Orleans to defendant, of date December 18th, 1885; the letters of the authorities to R. J. Connolly, of date January 7th, 1887, hereto attached, are all made part of this statement of facts. The bridge described in the petition was construed by R. J. Connolly, and the price and sum sued therefor is fair, reasonable, and in accordance with his own contract with the city; that his bill has been approved by the commissioner of public works and city surveyor of said city; that all the formal requirements of both said contracts have been complied with; that contract between the city of New Orleans and the defendant company of Oct. 2nd, 1879, contains the following stipulations:

A. 1st. That the purchasers of said franchises shall keep in repair the streets and bridges through which the lines of road pass, from curb to curb, under the directions of the administrator of improvements and the city surveyor.

138 B. The present defendant, The New Orleans City and Lake Railroad Company, is the successor and assignee of the New Orleans City Railroad Company, to which, in pursuance of various ordinances, the city of New Orleans, by contract before Gustave Legardeur, N. P., dated Oct. 2nd, 1879, for a lump sum of $630,000 cash and various obligations, among which — that contained in the above extract, sold the privilege to run and operate various street railways for a period of twenty-five years from 1st of January, 1880, namely, through Magazine, Camp, Prytania, Old Levee, Barracks, Rampart, Esplanade, and Canal streets. On the latter street the privilege to run a steam train from Carondelet street to the cemeteries exists, which steam trains, excepting switching tracks, are run on the tracks on which the street cars, drawn by mule power, are run.

C. The same company has possessed and enjoyed the privilege and operated the same street and steam railway under various contracts and ordinances for twenty years prior to the date of the new

term, except the steam trains, which are of subsequent origin, but run about ten years before the renewal.

D. In these first and original contracts the obligations of the company in regard to keeping in repair the streets and bridges "through which said tracks pass" are expressed in terms substantially identical with those in the existing contract.

139 E. Rampart street to Esplanade, Esplanade to a point somewhere near Broad street, and Canal street from St. Charles to its levee terminus, to the cemeteries and streets having strips of ground or neutral ground through the center, with a full street or public roadway on each side thereof, which constitutes the public street.

F. The supreme court, as matter of course, has several times decided that "neutral ground" is no part of the public street, and the State Legislature recognized the fact in act No. 73 of 1876 and later statutes.

G. The city has so considered them, and by various penal ordinances prohibits riding, driving, roaming cattle on these neutral grounds. Some years ago it permitted trees to be planted, &c.

H. Under its contract the defendant company has repaired streets and bridges, street crossings over and through which its tracks are actually laid, and no other duty until the present time has ever been asked of it by the city.

I. Under the original contract in 1860 it was contemplated at first to lay the track on the south or uptown roadway on Canal street. Work was commenced, but stopped on general protest from property-holders and the public, and an ordinance authorized them to be laid on the neutral ground, where they now are.

140 K. Some time about 1870 to 1872 the city desired to fill the canal and it did so. The defendant company during the time was ordered to lay its track to the right and left of the canal, resting on the space where the roadway and neutral ground adjoin, taking a portion of each.

L. The canal was filled some time after, the ground presenting a solid surface, which had become the extension of the neutral ground which had always existed on Canal street. The company defendant was ordered by ordinance to remove *to* its tracks from where they were to the center of the neutral ground, where they now are. This was several years before the renewal of the contract, in Oct., 1879.

M. The neutral ground is graded, drained, and kept in order by the defendant company.

N. During all this time, from 1860 under the former contract and now under the present one, the defendant company has laid and operated its tracks on the neutral ground, through Rampart, Esplanade, and Canal streets, and has never repaired or been called upon to repair or do any work on the streets or roadways or bridges or crossings in any case or instance outside of the lines or curbs of the neutral ground, except in the one instance involved in the present suit.

O. The bridge over Hagan-Avenue canal, in question, is a bridge covering the canal where it crosses Canal street. It is enclosed by

a railing on the outer sides parallel to the street, extends over the street only, is not connected with or attached to the bridge or
141 trestle which covers the canal through the neutral ground, which is distinct and kept in order by the defendant. It is simply a part of the street or roadway.

P. The shell roads or roadways have always been kept in repair by the city without demand on the defendant.

Q. It was proved that the New Orleans and Carrollton Railroad Company maintained and kept in repair the roadway or street on both sides of the neutral ground on St. Charles avenue under a contract with the city to operate a street railway through said avenue, which is done on tracks laid and operated in said neutral ground.

But it was also proved that it was done under a clear and unambiguous stipulation in the contract to that effect. The contract in evidence contained the following, found in page 221, Jewell's Digest, ed. 1887:

"It shall be the duty of the railroad company purchasing these rights of way, &c., &c., to keep the following streets, including crossings, bridges, culverts, and intersections, in good order and condition at all times."

1. (Not applicable.)

"The streets or roadways bordering the neutral grounds of St. Charles avenue from Lee circle to Madison street, in Carrollton, from curb to curb; also including all crossings, bridges, culverts, and intersections."

R. The Canal-Street line of defendant company could not be operated without pecuniary loss if the obligation were
142 & 143 imposed upon it to keep in repair the roadway or streets on both sides of the neutral ground of Canal street, with all the incidental consequences that would flow from such an interpretation.

Nov. 9th, 1889.

(Signed) F. A. MONROE, *Judge.*

Copy of Notarial Act.

Jos. D. Taylor, notary public and official notary, city of New Orleans, # 170 Common street, cor. Carondelet.

No. —, city series No. —.

UNITED STATES OF AMERICA,
Parish of Orleans, City of New Orleans.

Be it known that on this third day of the month of May, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and tenth, before me, Joseph Dervey Taylor, a notary
144 public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and official notary of the city of New Orleans, and in the presence of the witnesses herein-

after named and undersigned, personally came and appeared the Honorable Joseph Valsin Guillotte, mayor of the city of New Orleans, herein acting in his official capacity as mayor aforesaid, being herein and hereunto specially authorized and empowered by ordinance number 1555, council series, adopted by the council of the city of New Orleans on the 2nd day of December, A. D. 1885, a duly certified copy of which ordinance is hereto annexed and made part hereof.

Also came and appeared Mr. Robert J. Connolly, a resident of this city, and the said Joseph Valsin Guillotte, mayor aforesaid, declared that, acting in his said capacity of mayor and for — on behalf of the city of New Orleans, by virtue of said authority vested in him by said ordinance No. 1555, council series, and in confirmation of a sale and adjudication made by the Honorable Joseph N. Hardy, comptroller of the city of New Orleans, on the thirteenth day of October, one thousand eight hundred and eighty-five, he does by these presents grant, bargain, sell, and confirm unto the said Robert J. Conolly the contract for the repairing of streets through which the various street railroads pass, as per specifications on file in the office of the city surveyor, a copy whereof is hereto annexed and made part thereof. The said Robert J. Conolly, contractor, herein binds himself and his
145 heirs and assigns to perform and execute said contract well and faithfully and strictly in accordance with said specifications, to observe and comply with all the conditions and stipulations therein contained in every particular, and at all times to abide by himself and hold his heirs and assigns amenable and subject to the terms, penalties, and conditions of said specifications and of this contract, which said specifications are hereto annexed for reference. All work which may be ordered to be done by the commissioner of public works and the city surveyor and which may be done under this contract shall be done by said contractor at his own expense for all material, labor, and other expenses attending such work, and said contractor hereby consents and agrees to relieve the city of New Orleans from any liability or responsibility to him in any manner for any labor or material which he may furnish or expenses which he may incur in the performance of any portion of this contract; and he further agrees and binds himself to promptly comply with all orders which he may receive from the proper officers of the city for work to be done and performed under this contract, and to do the same to the entire satisfaction of such officers.

Said contractor shall be entitled to receive payment for work done in pursuance of this contract from the respective railroad
146 companies on production of the proper certificate of the commissioner of public works and city surveyor, and he shall be entitled to receive certificates on completion and acceptance of the work ordered or for each five hundred (500) dollars' worth of work when the amount of work to be done shall exceed that amount.

Said contractor shall be entitled to charge and receive payment in cash for all work which he may do or cause to be done under this contract from the particular railroad company along the line of

whose road or track any such work may be done the following prices, viz:

First. Repairing square-block paving, including material, one $\frac{70}{100}$ dollars per superficial yard.

Second. All new square-block paving, five $\frac{70}{100}$ dollars per superficial yard.

Third. Cost non-coverings furnished and set, four and seven-eighths ($4\frac{7}{8}$) cents per pound.

"Fourth." Repairing cobble-stone pavement, material furnished, one $\frac{74}{100}$ (1.74) dollars per superficial yard.

"Fifth." New cobble-stone paving done, three (3) dollars per superficial yard.

"Sixth." Repairing bridges, including lumber, labor, &c., three and one-half ($3\frac{1}{2}$) cents per foot, board measure.

"Seventh." Making plank roads, including labor, &c., three and three-quarter ($3\frac{3}{4}$) cents per foot, board measure.

"Eighth." Lake shells furnished, including grading, thirty-nine and one-half ($39\frac{1}{2}$) cents per barrel.

147 "Ninth." Repairing and grading unpaved streets, two $\frac{30}{100}$ (2.30) dollars per square of three hundred feet, including labor.

"Tenth." New material furnished, sixty (60) cents per yard.

And now personally came and intervened herein Mr. Terence Wolfe, Jr., resident of this parish, who, having read what is hereinbefore written, declared that he does hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said R. J. Connolly, contractor, and binds himself in favor of the city of New Orleans in the full sum of two thousand dollars, lawful money of the United States, payable on demand to the said mayor of the said city of New Orleans or his successor in office.

Now, the condition of the foregoing bond or obligation is such that if the said R. J. Connolly, contractor, shall well, truly, and faithfully do and perform all and singular the requirements of the foregoing contract strictly in accordance with the specifications and to the satisfaction of the city council of the city of New Orleans, then the above-written bond or obligation shall be null and void and of no effect, but otherwise to be and remain in full force and virtue. The said surety hereby waives the benefit of discussion granted by law to sureties.

Thus done and passed in my office, in the city of New Orleans aforesaid, the day, month, and year first aforesaid, in the
148 presence of Charles J. Rebentisch and George B. Goetz, witnesses, residing in this parish, who have signed their names with the said parties and me, notary, after due reading of the whole.

(Original signed)

J. V. GUILLOTTE, *Mayor.*
ROB'T J. CONNOLLY.
T. WOLFE, JR.
GEO. B. GOETZ.
J. D. TAYLOR, *N. P.*

A true copy of the original.
New Orleans, May 5th, 1886.
[SEAL.] (Signed) J. D. TAYLOR, *Not. Pub.*

Documents Referred to in Statement of Facts.

(Copy.)

1st.

DEPARTMENT OF PUBLIC WORKS,
ROOM NO. 18, CITY HALL,
NEW ORLEANS, *December 18th*, 1886.

Colonel Joseph A. Walker, president N. O. City and Lake R. R.

DEAR SIR: Your attention is hereby called to the dangerous and wretched condition of the south roadway bridge on Canal and which has been reported unsafe by the city surveyor in a communication to me dated December 16th.

This will serve to notify you to repair said bridge within the next ten days; in default of which I will order the work done at your risk and expense.

149 Respectfully,
(Signed) JOHN FITZPATRICK,
Commissioner of Public Works.

(Signed) D. M. BROSNAN,
City Surveyor.

I hereby certify above letter to be a true copy from folio 335, Letter Book 1886 & '87.
New Orleans, April 18, 1889.
(Signed) JOHN K. RENAUD, *Ch'f Clk.*

(Copy.)

2nd.

DEPARTMENT OF PUBLIC WORKS,
ROOM NO. 18, CITY HALL,
NEW ORLEANS, *January 7th*, 1887.

Mr. Robert J. Connolly, contractor under ordinance 1555, C. S.

DEAR SIR: This will serve to notify you that the N. O. City and Lake Railroad Co. are in default to the city of New Orleans by failing to comply *to* the notice sent them December 18th, 1886, directing the said company to repair the bridge on the south roadway on Canal street at the intersection of Hagan avenue, and you are hereby notified, under the authority of the ordinance 1555,
150 as adopted Dec. 2, '85, to commence work on said bridge by repairing said bridge, corner Canal and Hagan avenue, south roadway side of Canal St., as per specifications on file in the office of city surveyor and under the terms and conditions of the notarial contract entered into between yourself and the city, of date May 5th, 1886.

Respectfully,
(Signed) JOHN FITZPATRICK,
Commissioner of Public Works.

(Signed) D. M. BROSNAN,
City Surveyor.

NEW ORLEANS, *April* 18, '89.

I hereby certify above letter to be exact copy from folio 349, Letter Book 1886 & '87.

(Signed) JNO. K. RENAUD, *Ch. Cl'k.*

3d document.

SURVEYOR'S OFFICE, CITY HALL,
No. —. NEW ORLEANS, *February 4th*, 1887.

This is to certify that Robert J. Connolly, contractor for repairing street- through which the various railways run, as per ordinance of the city council, No. 1555, passed Dec. 2nd, 1885, has constructed certain work under his contract, and that there is now due him for rebuilding the bridge over Hagan avenue, on the south side of Canal St., the sum of four hundred and fifty-two $\frac{17}{100}$ dollars, as follows, viz:

To furnishing and placing 12,919 feet of lumber at 3½ ---- $452 17

151 For ac. of the N. O. City and Lake Railway Co.

(Signed) D. M. BROSNAN,
City Surveyor.

(Signed) JOHN FITZPATRICK,
Commissioner of Public Works.

(Signed) J. V. GUILLOTTE, *Mayor.*

Resolution of City Council, with Endorsement of Mr. Gilmore, Filed.

In the proceedings of the council of June 3d, 1884, appears the following:

By Mr. MOORE: Moved that the N. O. Railroad Co. be required to transfer to the center of the neutral ground the track now on the line of the Canal-street shell road, agreeable to the conditions of the contract, and delayed for the filling placed in the canal to become settled, and that the city surveyor be directed to notify the president of the railroad company of the order of this body.

"Adopted."

" Endorsement of Mr. Gilmore on above resolution:"

It is hereby agreed that the within ordinance is to be copied in the transcript as part of the statement of facts in the case of Connolly *vs.* N. O. City and Lake R. R. Co.

(Signed) SAM'L L. GILMORE,
Ass't City Att'y.

152 *Statement of Judge Monroe.*

In the above-entitled cause described by the undersigned, presiding in division C of this court, on the evidence offered in the cause and fully summarized in a statement of facts signed by me at the request of counsel for plaintiff, I decided in favor of the defendant, The New Orleans City and Lake railroad, on the ground that

under said evidence I consider it as a matter of law that the New Orleans City and Lake railroad did not owe to the city of New Orleans the obligations of repairing and keeping in repair the roadways, crossings, and bridges on said roadways, making the two sides of Canal street, bordering upon the neutral ground from Claiborne street to the Metairie cemetery.

New Orleans, Nov. 26th, 1889.

(Signed) F. A. MONROE,
Judge Civil District Court, Division "C."

153 *Certificate.*

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

I, Edgard A. Luminais, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing one hundred and eighty-six pages do contain a true, correct, and complete transcript of all the proceedings had, documents filed, testimony and evidence adduced upon the trial of the cause wherein The State *ex Relatione* City of New Orleans is plaintiff and The New Orleans City and Lake Railway Company is defendant, instituted in the court and now in the records thereof under the number 21049.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this fifteenth day of January, in the year of our Lord one thousand eight hundred and ninety, and in the one hundred and fourteenth year of the Independence of the United States of America.

[SEAL.] (Signed) E. LUMINAIS, *Clerk.*

154 *Report of the Condition of Streets, Bridges, Tracks, &c., of the New Orleans City and Lake Railroad Company on June 7th, 1889, on All its Routes.*

DEPARTMENT OF PUBLIC WORKS,
ROOM NO. 18, CITY HALL, NEW ORLEANS, *June 7th*, 1889.

Condition of streets, tracks, bridges, etc., of the New Orleans City and Lake Railroad Company.

From Canal to Calliope, on Camp, 1 block, fair, rail-stones in some places rutty. 2nd. Up Prytania street, cobble-stone to Felicity; needs repairs in places, especially most of the intersections; between the 2 tracks (centre) very rough and uneven and many holes. 3rd. From Felicity to Jackson, dirt street, short planks between the tracks (centre); cobble-stone for mules; street not level and good order as it should be. From Jackson to Phillip, 1 block, good order. From Philip to 9th St., dirt street, not so good as lower down; drains from the track on either side have been cut 3 x 6 in each block from 1st St. up to let water off the track; some of those so deep and wide that a loaded wagon will be apt to stall therein. From 9th to Toledano it

is an old plank road; rotten and very bad. From Toledano, dirt again and lumpy. From La. Ave. to station, planked from outside to outside rail; dirt outside, narrow, undefined, and drains cut; there are no planks running parallel with the outer rails except at some intersections, and they are bad in many places; tracks too low. From station up Pitt St. (?), single track and very dangerous for
155 wagons, very high, narrow, only width of track and no parallel planks. On Arabella, where track is on one side, the road (1 block) is bad. Up Hurst St. double track again, planked from rail to rail, taking up most the street. From Arabella down, single track, high and dangerous as the other (up) to station; culverts and bridges generally good. From Calliope up Camp to St. Mary, dirt streets; cobbles in between the tracks; St. very bad; holes and ruts and very few parallel planks next to outside rail, some rocks instead, making it rough for vehicles; bricks have been put in these holes. From St. Mary to Washington, 1 block. From St. Andrew, 2 tracks; street passable, rough and bad holes in places, particularly between 1st and Washington. From Washington to 9th St., plank road from side to side; not in good order, rough, rotten in places, and particularly bad between 8th & 9th Sts. From 9th to Toledano, II block good. From Toledano to La. Ave., planks very rough; on La. Ave., lower side, to Laurel, good dirt street; up Laurel, dirt road, wood teamway; at Antoine, no culverts; the parallel planks not kept in order, broken, ends up, split, gone in many places, all causing holes dangerous to wheels of wagons close to track; street apparently uncared for, lumpy, and irregular. From Valmont up, double track, planked from rail to rail, takes up all street nearly; fair condition, except in centre, where it is rough and in need of repair in many places. From Valmont down, single track again on Constance to La. Ave. worse than Laurel; parallel planks bad at intersections; high, needs filling, holes deep on street and general rough appearance; La. Ave., up side, to Magazine, O. K. From St. Andrew, single track all II good generally, except
156 along side rails, to St. Joseph street; from there to Lafayette, holes here and there, and from Lafayette to Canal, especially between Gravier and Canal, large and dangerous holes, and along rails all the way the rocks are broken, cracked, and very rough and deep ruts all along, making it bad for wagons. Iron bridges generally good.

Rampart & Dauphine: From Esplanade down Dauphine to Elysian Fields, cobble-stone St.; then mixed dirt and rocks, wooden teamways; the rocks next to rail loose and holes, making it rough and bad haulway; street rough but passable; back rampart about same order; cobble from Elysian Fields to Esplanade; bridges fair, some too low in 9th ward.

Canal street: Some intersections bad; at Broad and Galvez very bad all within line of neutral ground; old teamway sticking up, rocks, &c., making crossing from one side to other very bad.

Rampart, Esplanade: Neutral ground cut in many places for drains. Beyond neutral ground on Esplanade the company never touches the street nor bridges in way of repairs.

Meterie road from Canal to Bayou St. John planked, very rough, and always in very bad order. Only one track—flat rails—the swamp side trail.

(Signed) WM. PIERCE,
Gen'l Sup't.

Endorsed: Civil district court, division B. No. 27049. Filed Nov. 14th, 1889. (Signed) E. H. McCaleb, d'y cl'k.

157 MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 1st*, 1889.

Jos. A. Shakspeare, mayor.

From special committee on contracts and franchises.

Report of Special Committee on Contracts, etc.

NEW ORLEANS, *May 7th*, 1889.

To the honorable the mayor and city council:

Your committee respectfuliy report—

That for several weeks past we have been investigating the various street-railroad franchises, in connection with the obligations of the companies thereunder, and the manner in which such obligations are being complied with, and had expected to report on the New Orleans City and Lake Railroad and the St. Charles Street Railroad Companies to-night. Some of the papers pertaining to the case of the latter company not being available at the last session of the committee, we are compelled to confine ourselves to the New Orleans City and Lake Railroad Company in this report.

The company, through its president, Mr. Joseph A. Walker, have assumed the position that there are no obligations prescribed by their charter or franchises which they are bound to recognize, owing to some vague charge they make against the city for breach of contract.

Their claim and arguments it would be useless to discuss here, as they leave the city no option but to force a judicial interpretation of the city's rights in the premises.

The derelictions and defaults of this company are set forth
158 in accompanying communications from the city surveyor and memoranda from the committee, all of which we desire to be attached hereto and made part hereof, and recommend that same be forwarded to the city attorney with instructions to proceed immediately against the New Orleans City and Lake Railroad Company to compel a compliance with the obligations imposed by their franchises and their responsibilities as public carriers.

Respectfully,

(Signed) JAMES G. CLARK,
Chairman for Committee.

Received and recommendations adopted.

A true copy of the extract from the official proceedings of the council of the city of New Orleans, regular session of May 7th, 1889.

(Signed) E. L. BOWER,
Chief Clerk Mayor's Office.

MAYORALTY OF NEW ORLEANS,
CITY HALL, 13*th April*, 1883.

(No. 248, council series.)

An ordinance granting to the New Orleans City Railroad Company or its assigns the right of way, franchise, or privilege of constructing, operating, and maintaining a street railroad through certain streets of the sixth district of this city, to be used in connection with and be a continued part of their "Camp and Magazine Streets line."

Be it ordered by the council of the city of New Orleans, That the right of way, franchise, or privilege of constructing, running, operating, and maintaining as an extension of their Camp and Magazine Streets car lines — through the following-named streets, with
159 all necessary turn-tables, switches, and turnouts, be, and the same is hereby, granted to the New Orleans City and Lake Railroad Company or its assigns for a term equal to the remaining number of years of their present franchise, which expires on the 1st day of January, 1906, according to the conditions and stipulations hereinafter stated.

Be it further ordained, etc., That this right of way, franchise, or privilege shall commence from the present tracks at the junction of Magazine and Toledano streets, through Magazine by double track to Louisiana avenue, through Louisiana avenue (lower side) to Laurel street by single track, to Valmont street up by double track, through Laurel street to the upper city park, returning through Laurel street to Valmont street; thence through Valmont street by single track to Constance street; thence through Constance street by single track to Louisiana avenue (upper side), by single track to Magazine street; thence through Magazine street (by double track, as heretofore mentioned) to starting point.

Be it further ordained, etc., That the material used in the construction of said road shall be as follows:

1st. Cross-ties.—The cross-ties shall be of the best quality of cypress, 0 up, and pine, eight (8) feet long, hewn or sawn on two opposite sides, having not less than (10) ten inches of face and seven (7) inches of uniform thickness. They shall be notched two (2) inches in depth for insertion of stringers, and their distance apart shall be not more than four (4) feet from centres.

2. Stringers.—The stringers shall be of the best quality of
160 milled pine, of not less than five (5) by nine (9) inches and not less than twenty (20) feet long. They shall be fastened to each cross-tie inside and outside by spiked wrought-iron knees half ($\frac{1}{2}$) an inch thick, two (2) inches wide, and each part of knee six (6) inches long.

3. Tie-rods.—The stringers shall be fastened by tie-rods five-eighths (⅝) of an inch in diameter and be of sufficient length, having heads, threads, and nuts, and placed throughout every ten (10) feet apart; and

4. Rails.—The rails used on this line of road shall be the flat rails X, five (5) inches wide, resting on suitable chairs at their ends, and shall be well spiked with (6) inch wrought-iron spikes. The entire space between the rails and tracks shall be transversely planked with 3 x 12 inch milled pine, and along the two outer sides of the tramways throughout this route shall be placed close by to the stringers and on a level with the top of the rail, one plank not less than three by twelve inches in dimension.

Be it further ordained, etc., That it shall be the duty of the said railroad company to construct all crossings, bridges, and culverts and wings of same which in the opinion of the commissioner of public works and the city surveyor are at any time needed, and to keep the said tracks between the banquette curb lines, including all plankings, crossings, bridges, culverts, and wings of same, and also all the intersections of the street of this route, at all times in good order and condition, subject to the approval of the commissioner of public works and city surveyor.

Be it further ordained, etc., That the upper terminus of
161 this extension shall be at any point the said company may select between the lower line of said park and Henry Clay avenue; in other words, just where their stables, shops, and car-houses may be constructed according to existing laws and ordinances.

Be it further resolved, etc., That mules or horses shall be used as the motors of this line and shall, when upon the road, be belled with the usual car bell, and not to be driven at a greater rate of speed than six miles per hour, and in no case shall steam or other motors than herein specified be used by this company unless by consent of a majority of the *report* holders residing along this route and the concurrence of the council of this city.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" shall commence operations on said road within sixty days after the passage of this ordinance and shall have the same finished within six months thereafter, all of which shall be constructed according to lines and levels to be furnished by the city surveyor and to the entire satisfaction of the commissioner of public works and city surveyor.

Be it further ordained, &c., That the cars on this route shall leave their stations or starting points at succeeding intervals of time: 1st. Not exceeding (10) ten minutes between the hours of five (5) a. m. and nine (9) p. m. 2nd. Not exceeding fifteen minutes (15) between nine (9) p. m. and twelve thirty (12.30) a. m. 3rd. And not exceeding sixty (60) minutes between twelve thirty (12.30) a. m. and five (5) a. m., and the fare to be charged on said line of road
162 shall not exceed (5) five cents between Canal street and its upper terminus or for a lesser distance either way between the hours of five (5) a. m. and twelve thirty (12.30) a. m., and the

fare to be charged as above between twelve thirty (12.30) a. m. and five (5) a. m. shall not exceed ten (10) cents either way. It is well understood that this time of ten minutes may at any time be altered so as to make it five minutes or less between the starting of each car.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" is *all*, for and in consideration of this franchise, right of way, or privilege herein granted, place to the credit of the city the sum of $50,000, to be paid in five yearly installments, the first to be paid on January 1st, 1890, and the remainder in the years succeeding until the whole amount be absorbed, and said $50,000 to be expended in the building of levees in rear of city.

Be it further ordained, etc., That the property and appurtenances connected with this section of the road and belonging to said New Orleans City Railroad Company shall revert to the city of New Orleans at the expiration of this franchise or right of way on a valuation to be ascertained by two disinterested persons, one to be appointed by the railroad company and the other by the city, and in the event of a disagreement as to said valuation between the said two persons thus appointed a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final and binding.

Be it further ordained, etc., That it is hereby made the duty of the commissioner of public works and city surveyor to notify
163 the said company in writing, through its president or chief officer, of any violation of the requirements or agreements contained in the ordinance, giving them a stated time to rectify the same, and if, upon the expiration of such time, the company has failed, neglected, or refused to comply with such notice, then the city council shall have the said violation rectified at the expense of said company without further notification, the cost for so doing to be recoverable before any court of competent jurisdiction.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" bind themselves to complete continuation of road within the time hereinbefore stated, and for the faithful execution of the same the said railroad company shall furnish the city of New Orleans, to the satisfaction of the city council, good and solvent security in the shape of a bond in the sum of $5,000, making real estate unencumbered. The said bond shall be made in favor of the mayor of the city of New Orleans and be filed and recorded in the mortgage office of the city of New Orleans; and it is well understood that in case of failure by the said company to comply with the before-mentioned conditions and requirements to finish the work of construction within the time fixed its bond shall then become forfeited to the city of New Orleans. In case the commissioner of public works and city surveyor be dissatisfied with the manner in which the work is being executed, or should the company fail to complete the work as above specified, the commissioner of public works and city surveyor shall report the same to the city council, which body shall have the right to annul the franchise without

putting the company in default, as required by article 190 of
164 the Civil Code or any law or laws, and without indemnity; and it is to be also well understood that in case the company shall abandon the work or not finish the same in accordance with this ordinance the said company shall forfeit all claims it may have for or in part of the work done by it up to the date of its abandonment, the company expressly agreeing and understanding that this condition is in all things binding, and that the company, their heirs, legal representatives, or assigns, shall at no time in any court of justice, by plea, answer, objection, motion, objection of any kind, sort, or description or under any circumstances, set up, urge, or in any way allege, plead, or claim that the conditions of this ordinance *is* not in all respects legal, binding, and obligatory on the company or its legal representatives or assigns.

Be it further ordained, etc., That nothing in this franchise shall be construed as holding the city responsible for any liability that may occur by reason of litigation or otherwise between the city railroad company and the Crescent City Railroad Company occasioned by rights now claimed by said Crescent City Railroad Company on Magazine street between Louisiana Ave. and Toledano street.

Adopted by the council of the city of New Orleans 10th April, 1883.

W. H. MICHEL,
Ass't Clerk of Council.

Approved 13th April, 1883.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

165 MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 14th*, 1889.

A true copy of the resolution, No. 248, council series, adopted by the council of the city of New Orleans 10th of April, 1883.

——— ———,
Chief Clerk and Custodian of City Ordinances.

(Signed) E. L. BOWER,
Chief Clerk.

MAYORALTY OF NEW ORLEANS,
CITY HALL, 1*st March*, 1884.

(No. 600, council series.)

An ordinance granting to the New Orleans City and Lake Railroad Company or its assigns the right of way, franchise, or privilege of constructing, operating, and maintaining a double-track street railroad through certain streets in the sixth district of this city, to be used in connection with and to be a continued part of their Camp and Prytania Street line.

Be it ordained by the council of the city of New Orleans, That the right of way, franchise, or privilege of constructing, running, oper-

ating, and maintaining as an extension of their Camp and Prytania Street line their tracks through the following-named streets, with all necessary turn-tables, switches, and turnouts, be, and the same is hereby, granted to the New Orleans City and Lake Railroad Company or its assigns for a term equal to the remaining number of years of their present franchise, which expires on the 1st day of January, 1905, according to the conditions and stipulations hereinafter stated.

166 Be it further ordained, etc., That this right of way, franchise, or privilege shall commence from its present track at the intersection of Dufossat and Pitt streets by single track on Pitt street to Joseph street, on Joseph to Boudousquie street by single track, say one square; also on Boudousquie street from its intersection with Dufossat street to Joseph street by single track; thence on Joseph street by double track to Hurst street; thence on Hurst street by double track to the lower line of the city park or exposition ground.

Be it further ordained, That the material used in the construction of the said road shall be as described in ordinance No. 54, council series, according to the specifications therein contained, it being further understood that this extension shall be operated under the same time-table and fare charged as the now existing Prytania Street railroad line.

Be it further ordained, etc., That the said New Orleans City and Lake Railroad Company shall commence operations on said road within thirty days after the passage of this ordinance and shall have the same completed within ninety days thereafter; all of which shall be constructed according to lines and levels to be furnished by the city surveyor and to the entire satisfaction of the commissioner of public works and the city surveyor.

Adopted by the council of the city of New Orleans February 27th, 1884.

M. McNAMARA,
Clerk City Council.

Approved 29th February, 1884.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

167 MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 1st*, 1889.

A true copy of resolution No. 600, council series, adopted by the council of the city of New Orleans February 27th, 1884.

(Signed) E. L. BOWER,
Chief Clerk and Custodian of City Ordinances.

MAYORALTY OF NEW ORLEANS,
CITY HALL, 12*th January*, 1884.

(No. 541, council series.)

An ordinance granting certain privileges to the New Orleans City and Lake Railroad Company.

Be it ordained by the council of the city of New Orleans, That permission be, and is hereby, granted to the New Orleans City and Lake Railroad Company and the owners of the New Orleans Metairie Lake railroad, running to West End, to run "their lake cars, propelled by steam power," on Canal street from Basin street to Carondelet street and to establish a stand for said cars on the corner of Canal and Carondelet streets.

Be it further ordained, That said permission shall be in addition to all other privileges now enjoyed by said company and shall be governed by the provisions of ordinance No. 6891, A. S.

Be it further ordained, That said permission shall continue until January 1st, 1906, the date of the expiration of the Canal-street right of way owned by said company.

168 Adopted by the council of the city of New Orleans 4th January, 1884.

W. H. MICHEL,
Assistant Clerk of Council.

Respectfully returned disapproved.

W. J. BEHAN, *Mayor.*

January 11th, 1884.

The foregoing, having been returned to the council, was duly adopted this 11th day of January, 1884, notwithstanding the veto of the mayor, by the requisite two-thirds vote, as required by section 20 of the charter of the city.

W. H. MICHEL,
Assistant Clerk of Council.

January 11th, 1884.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 1st*, 1889.

A true copy of resolution No. 541, council series, adopted by the council of the city of New Orleans January 11th, 1884, the veto of the mayor to the contrary notwithstanding.

(Signed) E. L. BOWER,
Chief Clerk and Custodian of City Ordinances.

MAYORALTY OF NEW ORLEANS,
CITY HALL, 3*rd January*, 1884.

(No. 523, council series.)

An ordinance amending ordinance No. 7725, A. S.

Be it ordained by the council of the city of New Orleans,
169 That ordinance No. 7725, A. S., approved April 4th, 1882, be

amended so as to grant unto the New Orleans City and Lake Railroad Company, the successor of the New Orleans City Railroad Company, in addition to the privileges therein contained, the right of laying a single or double track and of running cars thereon on Maurapas street from Encampment street through Maurepas to its junction with Esplanade street, where the cars of the company now run.

Be it further ordained, That all the rights and obligations of said ordinance No. 7725, A. S., and of this ordinance are hereby declared to be in full force and effect and shall remain so for the benefit of said New Orleans City and Lake Railroad Company so long as it operates the Esplanade-Street line of cars.

In consideration of this privilege the company agrees to plank the whole street (except the sidewalks) with three-inch yellow-pine planks, spiked with six-inch wrought spikes to below pine mud sills, 4 x 8, placed three feet from centres and pinned to the ground with oak pins two feet long, the whole planking to be for the length of new track laid and to be subject to the approval of the commissioner of public works.

Adopted by the council of the city of New Orleans 27th December, 1883.

W. H. MICHEL,
Assistant Clerk of Council.

Approved 20 January, 1884.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

170 MAYORALTY OF NEW ORLEANS,
CITY HALL, *July 1st*, 1889.

A true copy of resolution No. 523, council series, adopted by the council of the city of New Orleans December 27th, 1883.

(Signed) E. L. BOWER,
Chief Clerk and Custodian of City Ordinances.

171 *L. W. Brown's Report of Work to be Done by the New Orleans City and Lake Railroad Company on Dauphine Street, 3rd District.*

SURVEYOR'S OFFICE, ROOM NO. 49, CITY HALL,
NEW ORLEANS, *November 24th*, 1888.

Major B. M. Harrod, city surveyor.

DEAR SIR: At the request of Hon. A. Delevigne I have made a careful examination of the location, dimensions, and condition of the culverts under the track of the New Orleans City and Lake railroad on Dauphine St. from Delery to Poland streets.

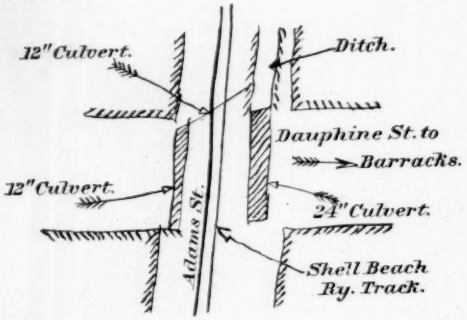
The following is a statement of my inspection:

At Delery St., 27″ culverts on upper side track; string- 8″ deep.
" Tricou St., 22″ " on both sides of street.

" Hancock St., 24" culverts on both sides of street.
" Monroe St., 24" " " " " " " bad condition on lower side.

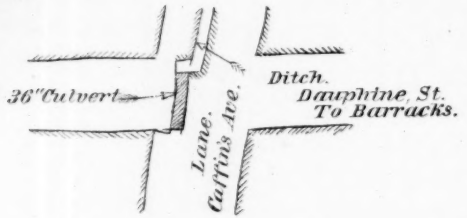
At Gordon St., 27" culvert on both sides of street; in bad order.
" Adams St., 19" " " " " " "

The 19" drain on upper side of Adams St. needs a 15" drain running under the Shell Beach R'y to the ditch on lower side of street, as shown in sketch.

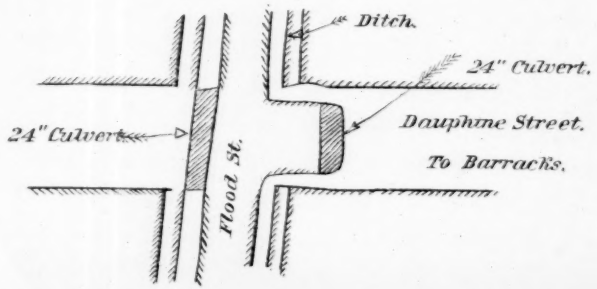


172 At Charbonnet street a lane exists; street not open. There is a 27" culvert in centre of lane.

At Caffin's Ave. a 30" culvert exists on upper side; no culvert on lower side. This culvert does not need ditch on wood side. The location is thus:



At Flood street, 24" culvert on both sides of street. The one on lower side is about 10 feet below the alignment of street gutters, thus:



At Andry St., 24″ culvert on lower side of lane.
" Egania St., 24″ " at lane; street not opened.
27″ " on upper side.
" Lazardi St., 24″ on lower side; bad order.
" Forstall St., 27″; none on upper side.
" Reynes St., 27″ culvert on both sides.
" Tennessee St. not opened; no culverts.
" Deslonde St., 22″ culvert on both sides.
" Jordan Ave., 26″ " " " "
Sisters, Manuel, and Josephine Sts. not opened; no culverts.
At Kentucky St. one 27″ culvert in centre of street and in bad order.
At Poland and Dauphine Sts., 22″ culverts on both sides.
These culverts are very low and entirely choked up.
173 The culverts at Poland and Rampart streets are in extremely bad condition. They are entirely choked up and afford no drainage facilities whatever.
Respectfully yours,
(Signed) L. W. BROWN, *Ass't C. S.*

174 *Municipal Matters.*

Street railroads in default.

President Joseph A. Walker appears before the committee of franchise.

He defends the non-action of his road, but makes some promises for the future.

The reserve fund for paving purposes.

The committee on franchises—President Joseph A. Walker makes a statement.

The special council committee on franchises met last night. Chairman Clark and Messrs. Brittin, Lynd, Keppler, and Haag were present. Mr. Joseph Walker, president of the New Orleans City and Lake railroad, was in attendance by special invitation.

Mr. Clark, in calling the meeting to order, said it was unnecessary to explain the reason of the meeting. It was in accordance with a special resolution of the council.

Mr. Walker introduced Charles F. Buck, Esq., as a representative of the company and not as a legal adviser.

Mr. Clark read the rules in the digest regarding the duty of the company as to paving and keeping paved the streets along its tracks.

Mr. Brittin read the ordinance defining the obligations of the company to have the spaces between the tracks paved with either round stones or heavy timber, and the trackway itself paved with
175 pine planks 3 inches thick, such pavement to be on all streets through which the road runs. He asked Mr. Walker if he claimed the company had planked the streets in accordance with the conditions.

Mr. Walker replied that the company had not complied with the conditions because the city was the first to violate them. On the 2nd day of October, 1879, the New Orleans City and Lake railroad purchased all its rights, exclusive, for the enormous sum of over $690,000. Thirty days after the city violated its contract by selling another franchise on the street sold to the company. Jewell's Digest shows the company was given an exclusive privilege, which could not be changed except by mutual agreement. On the 1st of November, or within thirty days, that contract was violated by the city. The right sold the New Orleans City and Lake railroad was sold to another company, who secured their grant for the consideration of $10,000. The new lessee was Shelby Seymour, and the very day he operated his line on St. Charles street it was a detriment of $100 a day to the original and rightful lessee. That was one reason why the company has never made the repairs. Another was because it never asked, which is a very just reason. The council that made the contract never asked for the repairs, nor did their successors, until the present time.

Mr. Brittin said the committee recognized the fact that the company had paid a large price for the franchise, and it was entitled to be dealt with generously and freely. It was the object of the committee to treat Mr. Walker and the company as neighbors or
176 as persons with whom they have business dealings; but every day the committee are stopped by interrogators and asked why it is that the city railway companies are not made to comply with their franchises. He, for one, had never been able to answer that question with satisfaction to either himself or his questioners. He had therefore introduced a motion before the council asking it to make a formal demand on these companies for the fulfillment of their contracts in so far as the improvements of the streets were concerned. It has been thought best to have the different authorities of these companies meet the committee and examine the matter in a friendly way. It was his desire to deal fairly with, but not to impose upon, the companies; but he also wished to have them comply with their obligations. The city ordinances say the company owes certain improvements. Whether it has exclusive privileges the court has decided. If the company has equities it is but just to have the committee meet it there; but that which is fair is wanted by the committee. The committee wants to know what the company will do and what it will not. It wishes to wipe out old issues and begin anew.

Mr. Walker declared that the courts had never settled anything in regard to the exclusive privilege of the company. What had been passed upon was an omission which occurred in the contract because of a typographical error. He then explained how the contract was awarded and how Mr. Shelby Seymour obtained a renewal of his grant after it had gone by default.

Mr. Brittin inquired how Mr. Walker's company felt towards the city in regard to their obligations imposed by con-
177 tract to pave and keep in order the streets.

Mr. Walker said the city had injured the company by many thousands of dollars by making the contract which violated theirs.

Mr. CLAIBORNE: In regard to keeping the streets in condition?

Mr. WALKER: The city's violation of the contract should relieve us from our obligation. The city is really indebted to us.

Mr. CLAIBORNE: You feel relieved from all your obligations in reference to other roads?

Mr. Walker answered in the affirmative.

Mr. Keppler suggested that in the discussion one street be considered at a time.

Mr. Branch K. Miller begged to interrupt the committee for a minute or two. Being accorded permission, he said the last council gave R. J. Connelly the right to make repairs and improvements called for in the franchise of the company, which they had not done. He was to depend upon the companies for payment. $500 worth of work was to be done and payment tested in the courts. He made that amount of repairs on Colonel Walker's road. The case is still pending in the courts. Mr. Miller desired to leave the contract with the committee and request them to ask the city attorney to forward the case.

Mr. Brittin did not see the use of taking up the discussion in reference to any road belonging to the company unless Mr. Walker would make some concession that the company has obligations resting upon it. Unless he would do this the matter goes beyond the committee's discussion and becomes a legal controversy. He
178 thought Mr. Walker assumed the position that he owes no obligation to the city.

Chairman Clark thought Mr. Brittin correct in this.

Mr. Buck said that the company acknowledged that in the entirety it had unfulfilled obligations, but on the other hand it claimed that the violation of the franchise by the city offset those obligations. He quoted the law on the subject of contracts and obligations.

Mr. Brittin said it had best be clearly established whether or not the company claims that its unfulfilled obligations are offset by the city's action in granting another franchise and whether the company has been damaged to an equal extent.

Mr. Walker claimed the city owed the company more than the forfeiture of the unfulfilled promises of improvements. If the matter was going to stop there he fully agreed with Mr. Brittin that it would be useless to go into a discussion of details.

He then reviewed the history of the franchises, and said the company had done many things which it could not have been compelled to do. In one case in the third district a track ran along the side of a lane which was private property. Councilman Delavigne had been requested by his people to ask that the track be placed in the middle of the lane. The company should not have been compelled to make the change by law, but Mr. Delavigne was a clever gentleman, popular with his people, and to let them have the idea that Mr. Delavigne was an active man in their interests the speaker had made the change, which cost $1,700.

179 Mr. Clark called attention to the horribly rough condition of the Prytania-Street road, between Calliope and Erato, a portion of the line much frequented by delicate ladies.

Mr. Walker promised to have repairs made early next week. He said he was thankful for having been given an opportunity of speaking and explaining the stand of the company. He did not think the company had been properly treated. Besides the immense amount of money originally paid for its franchise the company pays $40,000 in taxes, rides the police free (a thing of which it is getting very tired), and gives transportation to orphans and firemen. Overloaded drays are permitted to use the roadway and tear it up. During the exposition the damage done to the company's tracks was $20,000. The company would, nevertheless, be willing to meet the committee half way.

Mr. Keppler explained that he was in favor of a settlement being arrived at without an appeal to the courts.

Mr. Buck said the company was only in default as far as concerned the planking between the rails. It meant to keep the roads in repair. The only question at issue is in regard to the paving, and its obligation to do this the company considered offset by the city's violation of the contract.

After further discussion Messrs. Walker and Buck retired.

Mr. Brittin offered the following, which was adopted:

Resolved, That the city surveyor prepare a report for the committee embodying a full statement of the obligations imposed by the contract upon the City and Lake Railway Company, and what part of the same remains unfulfilled at this date; that such report be made to this committee not later than the 1st of May.

180 The secretary was ordered to request the attendance at its next meeting of Mr. W. J. Behan, president of the Crescent City railroad.

181 *That Big Damage Suit.*

To the editor of the Picayune:

The unfounded pretensions of the N. O. City and Lake Railroad Company have been fully exposed both before the courts and through the newspapers, but I propose to show that there is no foundation whatever on which a recovery of damages can be had against the city.

First admitting, for the sake of argument, every allegation made by the City and Lake Railroad Company with reference to the disregard of its rights on Camp street, still I assert it has sustained no damage therefrom.

Its loss of receipts arise from the fact that the Coliseum road runs through other streets than Camp and competes with the Magazine line for travel that it formerly controlled exclusively.

The contract of the City and Lake Railroad Company says nothing about the construction of roads through parallel streets. The city only promises not to grant any rights to a rival company on the same streets, and, conceding everything claimed in the damage

suit about the violation of prior rights, I repeat there is no legal ground set up for the recovery of damages. In the petition it is asserted that the uptown track of the Coliseum line runs through Camp street for four squares. As a matter of fact this is not true. No portion of the uptown track runs through any portions of Camp street. Camp St. lies on the river side of the canal and its extension, while the uptown track of the Coliseum runs wholly on the lake side of said canal, which is the extension of Coliseum street. But supposing the allegation of the petition is correct, then the only damage that could possibly arise from the use of Camp street would be the number of passengers who, only wanting to ride these four squares, would enter the Coliseum cars instead of the Magazine. This course of damage would be too small for estimation.

182 It is true the down track of the Coliseum road runs through Camp street from Felicity road to Clio street, but this causes no damage to the Magazine cars, because it runs in the opposite direction and cannot possibly compete for travel going uptown.

So much for the claims of the City and Lake Company on its own pretensions.

The rights of the Crescent Railroad Company both on Camp street and to the connection it is authorized to make between the Coliseum and Annunciation lines are long prior in time to the right of the City and Lake Company.

The right to construct the Coliseum line was granted in 1871 by ordinances passed in due form and duly accepted by Chase & Seymour, the grantees, by notarial act before A. Hero.

The building of the road was enjoined by the St. Charles R. R. Company, and the name of Wm. H. Hunt, who was then the attorney for the City Railroad Company, is signed to the petition of injunction, and this looks as if this injunction suit was instigated by the City Railroad Company.

This injunction suit was kept in court until November, 1879, when the confirmatory ordinance No. 6192 was passed under which the Coliseum road was constructed.

Before this confirmatory ordinance was enacted the city took counsel of her legal advisers and they gave the opinion, which is undoubtedly correct, that Chase & Seymour, having been enjoined by rival roads, were not in default and had not lost their rights under the original ordinances. Nor is this all.

The confirmatory ordinance of 1879 is unquestionably good unless the grant of 1871 to Seymour & Chase had elapsed and unless some other company had acquired vested rights in the meantime. No other company had acquired any rights on Camp street prior to the confirmatory ordinance of November, 1879. The New Orleans

183 City and Lake Railroad Company acquired no rights on Camp street until June, 1881, more than eighteen months afterwards.

This is an absolute fact, both by the contract between the city and the City and Lake Company, but by a solemn judgment of court.

When the original contract of 1879, between the city and that company, was made the portion of the system through Camp street from Poeyfarre and St. Andrew street was not included, and the

City and Lake Company acquired no rights on Camp street until 1st June, 1881, when ordinance 7127, A. S., was passed.

The rights between the Crescent City Railroad Company and the New Orleans City and Lake Company have been passed on by the courts and are no longer open to discussion.

The City and Lake Company enjoined the Crescent City railroad from constructing its tracks on Camp street, and paid $5,000 damages for the luxury of doing so. The relative rights of the two companies on Camp street were reviewed at length by Judge Pardee, of the United States circuit court, and all the issues were decided in favor of the Crescent City Company; so it may be safely contended that the big damage suit was brought to frighten the council and not to recover damages.

(Signed) JOHN M. BONNER,
Attorney for Crescent City R. R. Co.

184 & 185 UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

NEW ORLEANS CITY RAILROAD COMPANY
vs.
CRESCENT CITY RAILROAD COMPANY. } No. 9239. In Equity.

Carleton Hunt, Esquire, for complainant.
John M. Bonner, Esquire, for defendant.

Transcript of Proceedings in the United States Circuit Court.

(Index omitted here. See general index.)

186 NEW ORLEANS CITY R. R. Co.
vs.
CRESCENT CITY R. R. COMPANY. } U. S. Circuit Court, Eastern District of Louisiana. No. 9239.

Petition to Set Aside Injunction. Filed December 31st, 1880.

To the hon. the judge of the circuit court for the 5th circuit and district of Louisiana:

The Crescent City Railroad Company, a corporation organized under the laws of the State of Louisiana and having its domicil in this State, respectfully represents that the City Railroad Company, another corporation formed and organized under the laws of this State and having its domicil in the city of New Orleans, commenced a suit by process of injunction against your respondent in the civil district court for the parish of New Orleans on the 14th Dec., 1880, and without notice, and without a rule *nisi*, obtained from said civil district court an injunction stopping all the employees of respondent from proceeding with their labor in laying and building their railroad track and inflicting great hardship on respondent, and that after verbal notice was given that application would be made to dissolve said injunction on bond, under the provisions of the Code

of Practice of Louisiana, the plaintiff in said cause filed its
187 petition and bond to remove the case into this honorable court under the act of Congress of 1875 defining the jurisdiction of U. S. circuit courts, and the judges of the civil district court granted said order of removal *ex parte* and without notice to respondent.

Respondent further represents that it has brought up the record in said cause, and that it is now pending in this court.

Respondent further represents that the injunction granted by said civil district court was improvidently issued and is still in force, to the great detriment and injury of respondent.

Wherefore your respondent asks that a notice may be issued to the plaintiff that this case is pending in this court, and that your respondent will move the court on Wednesday, 5th Jan., 1881, at 11 o'clock a. m., to set aside said injunction on the grounds, 1st, that said injunction was improvidently issued, and, 2d, if the court should be of opinion that said injunction was properly issued, then respondent will move to dissolve the same by giving bond in such an amount and according to such conditions as the court may determine; and, further, that said plaintiff appear and answer to said motion and show cause to the contrary, if it have any.

(Signed) JOHN M. BONNER,
Att'y for Respondent.

Dec. 31, 1880.

188 *Exception. Filed Jannary 7th*, 1881.

N. O. City R. R. Co. *vs.* Crescent City R. R. Co. } U. S. Circuit Court. No. 9239.

Now comes into court the New Orleans City Railroad Company and, to the petition of the Crescent City Railroad Company herein to dissolve or bond the injunction herein, pleads the following exceptions:

1. That this court is at the present time without jurisdiction to pass on the said petition, for this, that the return day on which the record of the State court ought to be filed has not arrived, and until it does arrive it is not competent for this court to take cognizance of the same.

2. That the matters and things in the said petition referred to have been passed upon by the civil district court for the parish of Orleans, and the judgment of said court has acquired the force of the thing adjudged.

3. That the said Crescent City Railroad Company is not entitled to bond the injunction herein.

Wherefore appearers pray that your honors will adjudge in their favor and against the said Crescent City Railroad Company and dismiss the said company's petition with costs; and they will ever pray.

(Signed) CARLETON HUNT,
Sol'r for N. O. C. R. R. Co.

189 *Order. 1st Ground in Rule to Dissolve Amended.*

Extract from the Minute Book, November Term, 1880.

NEW ORLEANS, FRIDAY, *January 7th*, 1881.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

N. O. CITY RAILROAD CO.
vs.
CRESCENT CITY RAILROAD CO. } No. 9239.

This cause came on to be heard on the petition of the respondent to dissolve the injunction—Carleton Hunt for complainant, Jno. M. Bonner for petitioner—when the following motion was made and allowed, to wit:

"On motion of John M. Bonner, soliciter for the respondent, it is ordered that the first ground to dissolve the injunction be so amended as to read that on Tuesday, 11th instant, at 11 a. m., counsel for said respondent would move the court to dissolve the injunction herein issued;" and the solicitor for the complainant, being then and there present in open court, took notice of the time fixed for making the motion.

And thereupon the exception this day filed by the complainant was taken up, and, having been argued by counsel, the court took time to consider.

190 *Order. Motion to Dissolve Postponed, etc.*

Extract from the Minute Book, November Term, 1880.

NEW ORLEANS, MONDAY, *January* 10, 1881.

Court met pursuant to adjournment.

Present: Hon. E. C. Billings, district judge.

N. O. CITY RAILROAD CO.
vs.
CRESCENT CITY R. R. CO. } No. 9239.

This cause came on to be heard on the motion of the defendant to dissolve the injunction herein and the complainant's objections thereto and was argued by the counsel of the parties respectively; whereupon and upon consideration thereof it was ordered by the court that the hearing of said motion be postponed until after the return day of this case, with leave to the defendant meanwhile to apply for an increase of the penal bond herein given by the complainant.

Demurrer Filed April 25th, 1881.

N. O. CITY R. R. Co.
vs.
CRESCENT CITY R. R. Co. } No. 9239.

191 The demurrer of Crescent City Railroad Company, defendant, to the petition or bill of complaint of the New Orleans City Railroad Company, the above-named plaintiff.

This defendant, by protestation, not confessing all or any of the matters and things in the plaintiff's petition or bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said petition or bill, and for cause of demurrer showeth that the plaintiff in its said petition or bill has not set forth any lawful or equitable cause of action against this defendant; that it contains no matter whereon this court can ground any decree or give to the plaintiff any relief against this defendant.

Wherefore, and for divers other good causes of demurrer appear-in said bill, the defendant doth demur thereto and respectfully demands the judgment of this court whether it shall be compelled to make any further or other answer to the said petition or bill, and prays to be hence dismissed with its costs and charges in this behalf most wrongfully sustained.

(Signed) JOHN M. BONNER,
Counsel for Defendant.

I hereby certify that in my opinion the foregoing demurrer is well founded in law.

(Signed) JOHN M. BONNER,
Solicitor for Defendant.

W. Van Benthuysen, being duly sworn, says he is the presi-
192 dent of the Crescent City Railroad Company, the defendant corporation in this suit, and that this demurrer is not interposed for delay.

(Signed) W. VAN BENTHUYSEN.

Subscribed and sworn before — April 25, 1881.

(Signed) F. A. WOOLFLEY,
Commissioner United States Court, Eastern District of Louisiana.

Exception of Plaintiff to Defendant's Motion to Dissolve. Filed May 28th, 1881.

NEW ORLEANS CITY RAILROAD Co.
vs.
CRESCENT CITY RAILROAD Co. } No. 9239. U. S. Circuit Court.

Plaintiff in this case, The New Orleans City Railroad Company, now comes into court and, to the rule of defendant to dissolve the

exception therein, pleads the exception of *lis pendens*, and the said New Orleans City Railroad Company now pleads that there is another action pending between the parties to this suit for the same object and the same cause of action in a court of concurrent jurisdiction, to wit, the case of The New Orleans City Railroad Company *vs.* Crescent City R. R. Co., No. 1641 of the civil district court for the parish of Orleans, now pending on appeal of the said
193 Crescent City Railroad Company in the supreme court of Louisiana, No. 3137 of the docket of the supreme court.

Wherefore the said New Orleans City Railroad Company prays that said exception be sustained and the said rule discharged with costs, and for all general relief.

(Signed) CARLETON HUNT,
Sol'r N. O. City Railroad Co.

Opinion. Filed June 4th, 1881.

U. S. Circuit Court, Eastern District of Louisiana.

N. O. CITY R'ROAD CO. *vs.* CRESCENT CITY R'ROAD CO. } No. 9239.

On motion to dissolve injunction.

The injunction in this case was obtained in the State court *ex parte* on the petition, affidavit, and exhibits. The removal of the cause of this court brings the injunction along. On the motion to dissolve the case stands substantially as though an *interim* order had been granted, and the question now was whether or not to grant the injunction. In this light I consider the case.

1st. The contract of the New Orleans City Railroad Company with the city of New Orleans passed Oct. 2nd, 1879, gives the
194 said company no right to any privilege on Camp St. between Felicity street and Calliope street. No such privilege is included in the advertisement, ordinances, specifications, or contract. The court can take no judicial notice of the necessary lines and connection of a street railroad running under contract rights obtained from a municipal corporation. The court must be controlled by the evidence, and parties must stand on their contract.

2nd. The city of New Orleans had no power under its charter and the laws of Louisiana to grant the New Orleans City Railroad Co. the exclusive and sole rights to use the public streets of the city for a street railroad.

3d. When in a contract granting by the city of New Orleans to a street railroad company a franchise to run and maintain a street railroad there exists provisions—this city of New Orleans binds herself not to grant during a period for which said franchises are sold a right of way to any other railroad company upon the streets through which said right of way is hereby sold, unless by mutual agreement between the city and the purchaser or purchasers of these franchises—the city is not thereby estopped from granting to other

railroad companies the privileges of running lines across any of the streets mentioned in the contract nor for such short distances along such streets where it may be deemed necessary to make connections and turnouts for other lines running mainly along other streets and between entirely different terminus.

195 4th. It seems to me that the extreme effect that can be given to the provisions just recited would be to hold that the grantee would be entitled to recover from the city any damages resulted to the grantee from concessions of right of way to other railroad companies upon the street enumerated.

The authorities cited in defendant's brief cover all these points. Brows *vs.* Duplesis, 14th An., 842, relied upon by pet'r does not conflict.

Let the injunction in this case be dissolved as improvidently issued.

(Signed) DON A. PARDEE,
Circuit Judge.

Decree. Injunction Dissolved.

Extract from the Minute Book, April Term, 1881.

NEW ORLEANS, SATURDAY, *June 14th*, 1881.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

N. O. CITY RAILROAD CO.
vs.
CRESCENT CITY RAILROAD CO. } No. 9239.

This cause came on to be heard on a motion of defendant to dissolve the injunction heretofore issued by the civil district court for the parish of Orleans on 15th December, 1880, and was argued by counsel. On consideration whereof, the court being of opinion that said injunction was improvidently issued, it is ordered that same be dissolved.

196 *Petition to Amend. Filed June 13th*, 1881.

To the hon. the judges of the circuit court of the United States, sitting in equity:

The petition of the New Orleans City Railroad Co., a corporation under the laws of Louisiana, domiciliated in the city of New Orleans, respectfully shows—

That petitioner, who is the complainer herein — annexed to the original bill herein, filed the contract of petitioner with the city of New Orleans of October 2nd, 1879, whereby it is stipulated that the city did grant, bargain, conveyed, transferred, assigned, and set over to petitioner the right of way and franchises — certain street railway therein designated; that by the first section of said contract the Camp and Prytania and Camp and Magazine Streets lines or street railway were included in the said sale, but that owing to a clerical

error in the place where the contract specifies that the road so sold run through certain streets it was omitted to specify a contract as part of the Camp and Magazine lines that the said sale included a single track on Camp street from Poeyfarre to St. Andrew street.

That the true intent and meaning of the sale of Oct. 2nd, 1879, to petitioner of the franchises and right of way to certain street railways in the city was to include, and that it does include, of right as part of the Camp & Magazine Street line of the said company the single track on Camp street from Poeyfarre to St. Andrew.

197 That in consideration of the premises the city of New Orleans, by the mayor and common council thereof, has adopted the ordinance No. 7127, A. S., which is hereunto annexed, marked Exhibit "C," and made part hereof, confirming the said sale of October 2nd, 1879, and recognizing petitioner as entitled thereunder *as* a portion of the Camp and Magazine Street lines thereunder conveyed to the single track of petitioner on Camp street from Poeyfarre to St. Andrew street, and that in pursuance of said ordinance the mayor has executed a public act in favor of petitioner declaring petitioner to be possessed of right of the said single track on Camp street from Poeyfarre to St. Andrew street, and that said public act is likewise hereunto annexed as part hereof and marked Exhibit "D."

Wherefore petitioner prays that your honors will grant leave to amend the original bill herein filed, in this, that the contract made part hereof and marked Exhibit "A," where it reads as follows, "the above-mentioned roads run on the following streets, 1st section comprises the following roads, passing through the streets hereinafter named, with tracks, turnouts, and turn-tables, viz.," "the Camp & Prytania and Camp and Magazine Street line; these tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to St. Andrew street; double

198 track on Prytania from Poeyfarre to Toledano street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania," be amended by inserting the words "a single track on Camp street from Poeyfarre to St. Andrew street," after the words "single track on Camp St. from Poeyfarre to Canal street" and before the words "single track on Poeyfarre street from Magazine to Camp street."

And petitioner prays for all further and general relief; and will ever pray, etc.

(Signed) CARLETON HUNT,
Sol'r for Complainant.

F. Wintz, being sworn, deposes that he is pres. of the N. Orl's City R. R. Co., complainants herein, and that the facts set forth in the foregoing petition are true.

(Signed) F. WINTZ.

Subscribed and sworn before me June 16, 1881.

(Signed) T. V. COUPLAND,
Commissioner United States Circuit Court, Eastern District.

Order.

Let this amendment to plaintiff's petition be filed as prayed for. June 13th, 1881.

(Signed) DON A. PARDEE, *Judge.*

199 *Petition of Plaintiff for Rehearing. Filed June 13th, 1881.*

U. S. Circuit Court.

N. O. CITY RAILROAD CO. *vs.* CRESCENT CITY R. R. CO. } In Equity.

To the honorable the judges of the U. S. circuit court for the district of Louisiana:

The petition of the New Orleans City Railroad Company, complainants in the above-entitled cause, respectfully represents to your honors that petitioners are entitled to a rehearing therein for the following reasons, to wit:

1st. That the decree herein pronounced dismissing complainants' injunction is erroneous, for this, that the said decree holds that the contract of the New Orleans City Railroad Company with the city of New Orleans, passed October 2nd, 1879, gives the said company no right to any privilege on Camp street between Felicity and Calliope streets, whereas the said contract conveys to the said company the franchises and rights of way until then existing in the N. O. City Railroad Company, and that the contract between the city and the company so existing prior to October 2nd, 1879, and so conveyed to the said company includes a single track on Magazine street and Camp street to their junction at the Magazine market, all of which will better appear from the contract of October 2, 1879, here referred to, and the resolution of the city of New Orleans No. 5230, and a public act of June 21st, 1860, in accordance therewith, by which resolution and contract the said company was authorized to
200 run said single track on Magazine and Camp streets to their junction at the Magazine market; and complainants annex said contract of October 2nd, 1879, and said resolution and act of June 21st, 1860, and make them part hereof as Exhibits A & B respectively.

2nd. That said decree is erroneous, in this, that the same was rendered prematurely so as to deprive complainants of their right to amend their bill herein.

That on motion of defendant's solicitor, Saturday, May 22nd, 1881, a motion to dissolve the injunction herein was set down for trial and heard; that no grounds were assigned for said motion except that the injunction herein had issued improvidently, but that on the trial the court was required by defendant to dissolve the injunction on the ground that the said contract of October, 1879, gave the complainants no right to any privilege on Camp street

between Felicity and Calliope; that complainants informed the court that if this were so, and this they deny, that it arose from clerical omission and failure to specify in the contract the single track from Poeyfarre to St. Andrew street, although that formed part of the Camp and Magazine Street line actually conveyed to the company, and complainants sought equitable relief for such omission from your honors sitting as chancellors.

That complainants applied at the first ensuing meeting of the council to correct and reform the said clerical omission, and caused the same to be corrected by ordinance passed May 31st, 1881,
201 # 7127, A. S., and that the said proceedings of the council were duly published, and that June 1st, 1881, complainants notified the defendant and advised your honors that they would petition for the amendment of their bill as soon as the said ordinance could be passed and procured.

That the approval of the ordinance was sought to be prevented and hindered by the president of the defendant company herein by protests and scandalous communication, and that such approval was delayed until June 4th, 1881, owing to the absence from the city of C. F. Buck, Esq., city attorney, whose advice was required by the mayor.

That June 4th, 1881, on the advice of the city attorney, said ordinance was approved and promulgated, and the same day the contract pursuant thereto between the city and complainants duly executed and, together with a petition for an amendment of the bill herein, duly presented to your honors; all of which will better appear from the said letters, said ordinance, and said petition and said contract, marked respectively Exhibits C, D, E, and F, and made part hereof.

3. That said decree is erroneous, in this, that it is inequitable and against good conscience that complainants, who have paid $630,000 for the grant of the privilege of the right of way on certain street railways, and in particular from Poeyfarre to St. Andrew street on Camp street, on condition that the same should be thereafter granted to no other party, should be deprived of their said rights, and that it is contrary to equity to grant the motion herein to dissolve the injunction of complainants, as that is the ulti-
202 mate and only relief sought by them and as such dissolution will expose them to irreparable injury.

(Signed) CARLETON HUNT,
Sol'r for Complainants.

F. Wintz, being sworn, deposes that he is pres. of the N. O. City R. R. Co.; that the facts hereinbefore set forth are true; that those relating to notice of amendment are upon his best knowledge and belief.

F. WINTZ, *Pres't.*

Subscribed and sworn before me June 13th, 1881.

(Signed) T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Sale of the right of way and franchises of sections 1 and 2 of the New Orleans City Railroad Company by the city of New Orleans to the New Orleans City Railroad Company October 2nd, 1879, marked Exhibit A.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this second day of the month of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the
203 104th, before me, Gustave Legardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Isaac Patton, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents, under and by virtue of resolution No. 6143, administration series, adopted by the council of the city of New Orleans on this 2d day of October, 1879, a certified copy whereof is hereto annexed for reference; and also came and appeared Frederick Wintz, of this city, president of the New Orleans City Railroad Company, and duly authorized as such in the full execution of these presents, under and by virtue of the resolutions adopted by the board of directors of their said company at their sitting of the 1st and 22d days of September, 1879, a certified copy whereof is hereto annexed for reference; and the said Mayor Patton, in his said capacity, declared that on the 25th day of March, 1879, the council of the city of New Orleans adopted the following resolutions, to wit:

No. 4968, administration series.

"Whereas the franchises granted by the city of New Orleans to the New Orleans City Railroad Company for running certain lines of railroad will expire in 1880; and

"Whereas it is necessary to give ample time to all parties who may desire to make bids or proposals for said franchises at the expiration of the time for which said franchises were granted by the city: Therefore be it
204 "Resolved, That the administrator of commerce be, and is hereby, authorized to advertise until the first day of July, 1879, in the official journal of the city, and also in one journal in the cities of New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the franchises of the following-mentioned roads for a period of twenty-five years from the respective date of the expiration of said franchises granted by the city of New Orleans to the New Orleans City Railroad Company, to wit: 1, the Magazine, Camp, Prytania, Rampart, and Duphine lines, which expire on the 3d day of February, 1880; 2, the Canal Street and Metairie Road line, which expires on the 2nd day of July, 1880; 3, the Esplanade Street line, which expires on the 2nd day of July, 1880.

"That the terms of said sale shall be set forth in specifications to

be drawn up by the administrator of commerce, with the approval of the council, and to be put on file in the office of the administrator of commerce as soon as practicable."

That on the 22nd day of April, 1879, the council of the city of New Orleans adopted the following resolution, to wit:

No. 5020, administration series.

"Resolved, That ordinance No. 4963, administration series, be amended to read as follows:

"That the administrator of commerce be, and is hereby, authorized to advertise until the first day of September, 1879, in the official journal of this city, and also in one journal in the cities of
205 New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the sale of the franchises of the railroad lines named therein from the respective dates of the expiration of said franchises granted by the city of New Orleans up to the first day of January, 1906."

That in accordance with the provisions of said resolution No. 4968, administration series, as amended by the said resolution No. 5020, administration series, the Honorable J. Henry Behan, administrator of commerce of the city of New Orleans, has published or caused to be published the following advertisement, to wit:

Sale of Franchises of the New Orleans City Railroad Company.

DEPARTMENT OF COMMERCE, ROOM NO. 13, CITY HALL,
NEW ORLEANS, *May 19th*, 1879.

"Sealed proposals will be received at the office of the administrator of commerce, room No. 13, city hall, New Orleans, until 12 m. on the first day of September, 1879, for the right of way on the following railroads, to wit:

"SECTION 1. Camp and Prytania and Camp and Magazine Streets lines, which expire on the 3d day of February, 1880.

"SECTION 2. Rampart and Dauphine, Canal Street and Metairie Ridge to Bayou St. John, and Esplanade and Bayou Bridge lines, which expire on the second day of July, 1880.

"The right of way to the purchasers of said franchises shall expire on the first day of January, 1906, and at the expiration of said time the said railroad cars, fixtures, and their appurtenances shall revert to the city on a valuation to be ascertained by two disinter-
206 ested persons, one to be appointed by the purchaser or purchasers and the other by the city, and in the event of a disagreement as to said valuation between said persons thus appointed a third party or umpire shall be appointed by one of the district courts on the joint application of the parties, the decision thereby had to be final.

"That the city shall bind herself to transfer to the purchasers of each line of road, as per sections 1 and 2, the right of reversion which the city now has to purchase all the property of each line at an appraised value.

"That said franchises shall be sold for each, the entire price to be paid by the purchaser or purchasers of the franchise or franchises. The delivery is made by the signing and delivery of the act of transfer and by placing the purchaser in actual possession.

"That the purchasers of said franchises shall keep in repair the streets and bridges through which the lines of road pass, from curb to curb, under the directions of the administrator of improvements and the city surveyor.

"That the fares to be charged by said purchasers on their roads shall never exceed the amounts now charged except as provided in the specifications herein referred to.

"Each bill shall be accompanied by a deposit or certified check of $50,000 as an evidence of their intention to abide by the adjudication, which amount shall be forfeited in case of failure to
207 sign the contract, and the same shall be held as a special deposit until the final delivery of said road and appurtenances.

"Bidders to whom the contract is not awarded shall have their deposits returned to them on the day adjudication is made. Bidders can bid for either franchise—say for sections 1 and 2, or both, at their option.

"Pamphlets containing specifications of contract can be obtained on application to the administrator of commerce.

"Proposals must be endorsed 'Bids for the franchises of the New Orleans City railroad.'

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf of the city, and until such deposit and payment of the price shall have been made and accepted by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAND,
"*Administrator of Commerce.*"

208 That, in accordance with the foregoing advertisement, sealed proposals for the franchises of the New Orleans City railroad were received up to 12 m. on Monday, the first day of September, 1879, at the office of the said administrator of commerce.

That on the same day, to wit, on the first day of September, 1879, the mayor and administrator met in committee of the whole in the mayor's parlor; that there and then the said sealed proposals were opened and the proposal of the said New Orleans City Railroad Company for the sum of six hundred and thirty thousand dollars ($630,000) was found to be the highest.

That at the session of the city council on this Thursday, the 2nd day of October, 1879, the bid or the proposal of the said New Orleans City Railroad Company *for* six hundred and thirty thousand dollars for the franchises of the New Orleans City railroad was accepted by the city council, and the mayor instructed to enter into and sign

the necessary contract with the said New Orleans City Railroad Company, as fully appears by the said resolution No. 6148, administrator's series, adopted by the council of the city of New Orleans on this 2nd day of October, 1879, a certified copy whereof is hereto annexed for reference, as aforesaid.

Now, therefore, the said mayor, Isaac W. Patton, declared that, in consideration of the foregoing and by virtue of the power in him vested by the said resolution No. 6148, administration series, he does by these presents, in his said capacity, and for and on behalf
209 of the city of New Orleans, grant, bargain, sell, convey, transfer, assign, and set over unto the said New Orleans City Railroad Company—the said Frederick Wintz, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans City Railroad Company and acknowledging due delivery and possession of all the property, cars, fixtures, and other appurtenances thereunto belonging or in anywise appertaining—the right of way and franchises on the following railroads, to wit:

SECTION 1. Camp and Prytania and Camp and Magazine Street lines for the full term and period commencing on and to be computed from the third day of February, 1890, and to end on the first day of January, 1906.

SEC. 2. Rampart and Dauphine, Canal street and Metairie to Bayou St. John, and Esplanade and Bayou Bridge lines for the full term and period commencing on and to be computed from the second day of July, 1880, and to end on the first day of January, 1906.

To have and to hold the said right of way and franchises of the said railroad lines and the right of reversion of the city to purchase all the property of each line unto the said New Orleans City Railroad Company, its successors and assigns, transferees and vendees, for the full term and period hereinabove fixed and determined by virtue of these presents.

This sale is made and accepted in accordance with the specifications on file in the office of the administrator of commerce;
210 which said specifications are in the words and figures following, to wit:

Specifications concerning the sale of the right of way and franchises for a term of years expiring on the first day of January, 1906, as per ordinances Nos. 4968 and 5020, administration series, hereunto annexed, of the following street railroads of the New Orleans City Railroad Company, to wit:

"Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal street and Metairie road to Bayou St. John, and Esplanade and Bayou Bridge lines.

"Section first.

"Camp and Prytania Streets line, Camp and Magazine Streets line.

"Section second.

"Rampart and Dauphine, Canal street and Metairie road to Bayou St. John, Esplanade and Bayou Bridge. The Camp and Prytania, Camp and Magazine, and Rampart and Dauphin Streets lines expire on the third day of February, 1880. (See ordinance No. 4945, attached.)

"The above-mentioned roads run on the following streets:

"First section.

"Comprises the following roads passing through the streets hereinafter named, with tracks, turnouts, and turn-tables, viz:

"The Camp and Prytania and Camp and Magazine lines.

"Three tracks on Canal street from St. Charles to Camp street, single track on Canal street from Magazine to Camp street,
211 single track on Magazine from Canal street to St. Andrew street, double track on Magazine from St. Andrew to Toledano street, double track on Prytania from Poeyfarre to Toledano street, single track on Camp street from Poeyfarre to Canal street, single track on Poeyfarre street from Magazine to Camp street, single track on Toledano street from Camp to Prytania street."

"Second section.

"Comprises the following roads passing through the streets hereinafter named, with the tracks, turnouts, and turn-tables:

"Rampart and Dauphine Streets lines.

"Double track on Rampart street from Canal street to Esplanade street, a single track on Dauphine street from Esplanade to Poland street a single track on Rampart street from Esplanade to Poland street, a double track on Poland street from Dauphine to Rampart street, a double track on Dauphine street from Poland street to Caffin's lane, a single track on Dauphine street from Caffin's lane to Delery street, with the right of a double track."

"Canal street and Metairie road to Bayou St. John.

"A double track on Canal street from Carondelet street to Metairie road, along Metairie road to New Canal, four tracks on Canal street from St. Charles to Carondelet street, double track on Metairie ridge from New Canal to Carondelet canal or Bayou St. John."

"Esplanade and Bayou Bridge lines.

Double track on Esplanade street from Rampart street to Bayou St. John, double track on Esplanade street from Levee to Rampart street. (See ordinance No. 2518, attached.)

212 "All these rights revert to the city at the expiration of the twenty years, to wit, the third day of February and the second day of July, 1880."

"Ordinance No. 4945, old series.

"Resolved, That the adjudication made by the comptroller on the twentieth day of January, 1880, of the right of way to establish railroads in the city of New Orleans under and by virtue of resolutions Nos. 4364, 4474, 4735, and 4766, to J. B. Slawson—securities, Henry Hart, F. Wintz, and P. Irwin—for and in consideration of $130,000 bonus offered by him, be, and the same is hereby, approved, the securities accepted, and the mayor authorized to sign the necessary act or acts with the said parties.

"Ordinance No. 5244, old series.

"Resolved, That the following adjudications made by the comptroller on the second of June, 1860, be, and the same are hereby, approved and the securities accepted, viz:

"First. Under resolution No. 5122, the right of way for a railroad on Canal street from Rampart street to the Metairie ridge to J. B. Slawson & Co.; security, Henry Hart, P. Irwin, and Frederick Wintz, for $500 bonus.

"Second. Under resolution No. 5119, the right of way for a railroad on Esplanade street from Rampart street to Bayou St. John to J. B. Slawson & Co.; security, Henry Hart, Patrick Irwin, and Frederick Wintz, for $500 bonus.

"Resolved further, That the mayor be, and he is hereby, authorized to sign the necessary act or acts with the said parties for the performance of the work.

213 "Ordinance No. 2518, administration series.

"An ordinance granting to the City Railroad Company the right of way for a railroad on Esplanade street to connect the Esplenade and Bayou line of the New Orleans City Railroad Company with the Levee line, and other purposes.

"Be it ordained by the city council, That for and in consideration of the sum of one thousand dollars in United States currency, to be immediately paid into the city treasury, there be, and is hereby, granted to the New Orleans City Railroad Company the right of way and privilege of constructing and laying a double track on Esplanade street to extend from the junction of Rampart to Peters or Levee street for the purpose of connecting the Esplanade and Bayou line with the Levee line of said company; the tracks, cars, equipments, management, and regulations to conform to and be identical with the roads to be connected. Said grant of right of way shall continue during the continuance of the charter of the New Orleans City Railroad Company, and shall terminate therewith. The track shall be laid in accordance with the specifications to be furnished by the city surveyor.

"The purchaser or purchasers should be bound to keep the paved and unpaved streets through which said tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb during the continuance of their privilege and right of way.

"They shall, on proper notification from the administrator of improvements and the city surveyor, raise, repair, and repave
214 any or all intersections of streets, when required, upon lines and levels, to be furnished by the city surveyor.

"They shall be required to widen and deepen any or all culverts and sluices to such dimensions as may be required and directed by the city surveyor. They shall be required to keep all bridges in repair and make new ones, when required by the administrator of improvements and the city surveyor, on all the streets through which their lines pass.

"The lines of said tracks within the rails shall be paved with round stone, except where square-stone pavements exist or may hereafter be made, in which case the same material shall be used for paving within rails. When the paving of the streets, where the same are paved, as well as the shelling of the streets where the same are shelled, shall be taken up for the purpose of repair they shall be replaced in the same condition as formerly and the streets graded to a proper grade, to be furnished by the city surveyor. Wherever the streets are not yet paved the lines of the tracks within the rails shall be paved either with round stones or with four-by-five-inch scantling in the best workmanlike manner, and the space between the lines of track and the gutters of the streets shall be planked with yellow-pine planks three inches wide, the timber used to be of the best quality and to the entire satisfaction of the administrator of improvements and city surveyor. The rails shall be of the same pattern as those now in use. The cross-ties shall be of the same pattern as those now in use. The cross-ties shall be of yellow pine six by eight inches and eight feet long; the string pieces of
215 yellow pine five by eight inches; all of the best quality of lumber and to the entire satisfaction of the administrator of improvements and city surveyor.

"Should the purchaser or purchasers at any time refuse to comply with any or all the requirements of these specifications or fail to comply with the notifications of the administrator of improvements and the city surveyor, or refuse or neglect to keep the streets and bridges in good order and condition, he or they or their authorized representatives shall be subject to a fine of $25 or thirty days' imprisonment for each and every offense at the discretion of the court, said fine to be recoverable before the recorder of the municipal district in which the offense was committed.

"The fare on the Camp and Magazine line between Canal and Toledano streets or for any lesser distance between these points shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Camp and Prytania line between Canal and Toledano streets shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Rampart and Dauphine lines between Canal street and the United States barracks shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Canal street and Metairie Road line, from neu-

tral ground on Canal street between Carondelet and St.
216 Charles to Metairie ridge or cemeteries, shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Esplanade and Bayou Bridge line from Canal street to Bayou bridge shall not exceed five cents per passenger either way, except as hereinafter provided.

"They shall further be allowed to charge five cents from the New Canal to Bayou St. John, on the Ridge line.

"The style of cars used to be the same as those now in use, unless some improved and advantageous pattern is introduced during the existence of this contract, when, upon application to and approved by the council, the same may be changed.

"The cars shall be drawn by horse or mule power, and if more than one horse or mule be used for each car they shall be driven abreast.

"Said cars shall be run as often during the day or night as the purchasers may deem proper, but not at greater intervals than every ten minutes from daylight to 10 o'clock p. m., and every fifteen minutes from 10 o'clock until 12.30 o'clock a. m., and every hour thereafter until daylight on the Camp and Magazine, the Camp and Prytania, the Rampart and Dauphine, to Poland street, the Esplanade and Bayou bridge, and the Canal and Bridge line to Broad-street station. For each and every fare after 12.30 o'clock they shall be allowed to charge twenty-five cents.

"Said purchaser or purchasers shall annually pay into the city treasury, upon the assessed value of said road and fixtures,
217 the annual tax levied upon real estate, the value of said road and fixtures to be assessed by the usual mode of assessment. The speed of said cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good head-light, placed in a conspicuous position in and on said cars, and for the violation of this or any other ordinance now existing, or that may hereafter be enacted, in accordance with the provisions of these specifications, on the part of any officer or employee of said roads, the purchaser or purchasers shall be liable to all fines and damages arising therefrom.

"The city binds herself to transfer to the purchaser or purchasers of the franchises of the New Orleans City railroad, as herein set forth, the right of reversion which the city now has to purchase all the property, cars, fixtures, and other appurtenances of each line at an appraised value, in accordance with the following section of their present contract, to wit:

"The said railroads, cars, fixtures, and other appurtenances shall revert to the city at the expiration of the said twenty years' privilege, on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser and the other by the city; and in the event of a disagreement as to said valuation between said persons a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final.

"The rights of way are for street railroads carrying passengers only.

218 "It is understood that the purchaser or purchasers are allowed to make such turnouts and crossings as may be necessary, on the streets through which they have the right of way, on lines and levels to be furnished by the city surveyor.

"The city of New Orleans binds herself not to grant during the period for which said franchises are sold a right of way to any other railroad company, upon the streets through which said right of way is hereby sold, unless by mutual agreement between the city and the purchaser or purchasers of these franchises.

"The purchaser or purchasers are not to change any of the tracks from the lines and levels now existing without the consent of the city council.

"The city reserves the right to limit the running of steam trains on Canal street to any part where the council may deem it expedient and necessary in the interests of the property-holders or the community at large.

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until the purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf of the city; and until such deposit and payment of the price shall have been made and accepted by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAN,
"*Administrator of Commerce.*"

219 And now the said Frederick Wintz, as president aforesaid, declared that he does by these presents, in his said capacity, bind and obligate the said New Orleans City Railroad Company, its successors, assigns, transferees, and vendees, at all times to abide by, comply with, conform to, and observe all and singular the terms, conditions, clauses, stipulations, regulations, and penalties of the said specifications, and to enjoy and exercise the herein-conveyed right of way strictly in accordance with the said specifications.

This sale, in conformity with the proposal made by the said New Orleans City Railroad Company and accepted by the city of New Orleans, is made and accepted for and in consideration of the price and sum of six hundred and thirty thousand dollars, for the full term and period hereinabove fixed and determined, payable cash.

Now, therefore, in conformity with the terms of the present sale and it being the true intent of the city to make delivery hereby, and the said New Orleans City Railroad Company being in full possession and acknowledging as the said Frederick Wintz, as president aforesaid, does hereby acknowledge, for and in the name of the said New Orleans City Railroad Company, due delivery of all the property, cars, fixtures, and other appurtenances belonging or in anywise appertaining to said railroad lines, the said Frederick Wintz,

as president of the said New Orleans City Railroad Company, has paid cash the said sum of six hundred and thirty thousand dollars ($630,000) into the department of finance of the city of New Orleans, as appears by the receipt of the administrator of finance, hereto annexed for reference.

220 And the said mayor, Isaac W. Patton, declared that by virtue of the authority in him vested by the said resolution No. 6148, administration series, he does by these presents, in his said capacity and for and in the name and on behalf of the city of New Orleans, acknowledge that the payment of the said purchase has been duly made by the said New Orleans City Railroad Company; that he does hereby accept the pay- of the purchase price and give full and ample acquittance and discharge for the same.

Thus done and passed, in New Orleans, at my office, the day, month, and year first above written, in the presence of Minor Martin Elmore and William H. Hyatt, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Original signed)

I. W. PATTON,
Mayor City of New Orleans.
F. WINTZ,
President N. O. City R. R. Co.
MINOR M. ELMORE.
WILLIAM H. HYATT.
G. LEGARDEUR, JR.,
Notary Public.

A true copy of the original on file and on record in my office.
New Orleans, October 3d, 1879.

G. LEGARDEUR, JR.,
Notary Public.

221 *Amendment to Contract of October 2nd, 1879, Marked Exhibit D.*

STATE OF LOUISIANA,
PARISH OF ORLEANS, CITY OF NEW ORLEANS.

Be it known that on this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-one, before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Honorable Joseph A. Shakespeare, mayor of the city of New Orleans and herein acting in his official capacity as mayor; and also personally came and appeared Frederick Wintz, of this city, president of the New Orleans City Railroad Company, acting in his capacity as such and duly authorized as such in the execution of these presents; which said appearers severally declared as follows, to wit:

Whereas the council of the city of New Orleans, at its session held on the thirty-first day of May, 1881, adopted an ordinance in the words and figures following, to wit:

No. 7127, administration series.

Whereas, October 2nd, 1879, pursuant to resolution No.
222 6143, A. S., and the adjudication thereunder made, the city of New Orleans entered into, before Gustave Legardeur, Jr., notary public, a contract of sale with the New Orleans City Railroad Company, whereby it was stipulated that the city did grant, bargain, convey, transfer, assign, and set over unto the said company, in consideration of the sum of $630,000, cash paid, the right of way and franchises to certain street railways therein designated;

And whereas, according to first section of said contract, the Camp and Prytania and Camp and Magazine Street lines of street railway were included in said sale for the full term and period commencing on and to be computed from the third day of February, 1880, and to end on the first day of January, 1906;

And whereas there appears to be an omission, owing to clerical error, in the specifications of the said contract where the same specifies that the roads conveyed run through certain streets, in this respect, that said contract recites the above-mentioned roads passing through the streets hereinafter named, with tracks, turnouts, turntables, to wit:

"The Camp and Prytania and Camp and Magazine lines.

Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track
223 on Magazine street from Canal street to St. Andrew street; double track on Magazine street from St. Andrew to Toledano street; double track on Prytania street from Poeyfarre street to Toledano street; single track on Camp street from Poeyfarre to Canal street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania streets, while it ought to have been further specified, as part of the Camp and Magazine Street line of street railroad sold to the said New Orleans City Railroad Company, as follows: A single track on Camp street from Poeyfarre street to St. Andrew street."

So it be ordained, &c., That the true intent and meaning of the said adjudication and sale of October 2nd, 1879, by the city of New Orleans to the New Orleans City Railroad Company of the franchises and right of way to certain street railways in the city was to include and does of right include and comprise, of the Camp and Magazine Street line of the said company, a single track of street railway on Camp street from Poeyfarre to St. Andrew streets, and that the mayor be and is hereby authorized to enter into and execute with the New Orleans City Railroad Company a public act before the city notary, amendatory of the specifications of the said act of October 2nd, 1879, and confirmatory of the said act, recognizing and declaring the said company to be entitled of right and lawfully possessed of the said single track on Camp street from Poeyfarre street to St. Andrew street, with the rights and franchises thereunto appertaining, as forming part of the Camp and Magazine Street line by the said adjudication and contract of October 2nd, 1879.

224 Which said ordinance No. 7127 — promulgated in the official journal of the city of New Orleans on this 4th day of June, 1881, and a certified copy of which is annexed to and made part of this act:

Now, therefore, the said Joseph A. Shakespeare, acting in his official capacity as mayor aforesaid and by virtue of the authority in him vested by said ordinance No. 7127 aforerecited, and copy thereof hereto annexed, and in the name and on behalf of the city of New Orleans, does by these presents amend the above-recited portion of the specifications of the contract entered into between the city of New Orleans and the New Orleans City Railroad Company before G. Legardeur, Jr., notary public, on the 2nd day of October, 1879, wherein is specified the streets through which the roads shall — from the Camp and Prytania and Camp and Magazine Street lines, so that the same shall read as follows:

"The Camp and Prytania and Camp and Magazine lines.

Three tracks on Camp street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track on Magazine from Canal street to St. Andrew; double track on Magazine street from St. Andrew to Toledano; double track on Prytania from Poeyfarre to Toledano street; single track on Poeyfarre street from Magazine to Camp street; single track on Camp street from Poeyfarre to St. Andrew street; single track on Toledano street from Camp to Prytania street."

225 And hereby further confirms said contract as thus amended unto the said New Orleans City Railroad Company, herein accepting same, through the said Frederick Wintz, president as aforesaid, subject otherwise to all the terms, conditions, clauses, stipulations, regulations, and penalties of the specification of said original contract, it being recognized and declared hereby that the said company is entitled of right and lawfully possessed of the said single track on Camp street from Poeyfarre street to St. Andrew street, with the rights and franchises thereunto appertaining as forming part of the Camp and Magazine Street line by the said adjudication and contract of October 2nd, 1879.

Thus done and passed at my office, in the city of New Orleans, in the presence of Samuel Alston and P. P. Stuart, witnesses of lawful age, residing in the city of New Orleans, who have hereunto signed their names, together with the said appearers and me, official notary of the city of New Orleans, the day, month, and year first above written.

(Original signed) JOS. A. SHAKESPEARE, *Mayor.*
F. WINTZ, *Pres'd't.*
SAM'L ALSTEN.
F. P. STUART.
SAM'L FLOWER,
Notary Public & City Notary.

A true copy. Four words erased, null, and one word interlined; all approved.

New Orleans, June 4, 1881.

(Signed) SAM'L FLOWER,

[L. S.] *Notary Public.*

226 Ordinance No. 7127, marked Exhibit "C."

MAYORALTY OF NEW ORLEANS, CITY HALL, *June* 4, 1881.

No. 7127, administration series.

Whereas, October 2d, 1879, pursuant to resolution No. 6143 and the adjudication thereunder made, the city of New Orleans entered into, before Gustave Legardeur, Jr., notary public, a contract of sale with the New Orleans City Railroad Company, whereby it was stipulated that the city did grant, bargain, convey, transfer, assign, and set over unto the said company, in consideration of the sum of $630,000 cash paid, the right of way and franchises to certain street railways therein designated; and

Whereas, according to "first section" of said contract, the Camp and Prytania and Camp and Magazine Street lines of street railway were included in said sale for the full term and period commencing on and to be computed from the 3d day of February, 1880, and to and on the 1st day of January, 1906; and

Whereas there appears to be an omission owing to clerical error in the specification of the said contract, where the same specifies that the roads conveyed run through certain streets, in this respect, that said contract recites the above-mentioned roads passing through the streets hereinafter named, with tracks, turnouts, turn-tables, to wit:

The Camp and Prytania and Camp and Magazine lines.

Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street;
227 single track on Magazine street from Canal street to St. Andrew street; double track on Magazine street from St. Andrew to Toledano street; double track on Prytania street from Poeyfarre street to Toledano street; single track on Camp street from Poeyfarre street to Toledano street; single track on Camp street from Poeyfarre to Canal street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania street; while it ought to have been further specified as part of the Camp and Magazine Street line of street railroads, sold to the said N. O. City Railroad Company, as follows: A single track on Camp street from Poeyfarre to St. Andrew street.

Be it ordained, etc., That the true intent and meaning of the said adjudication and sale of October 2, 1879, by the city of New Orleans to the New Orleans City Railroad Company of the franchises and right of way to certain street railways in the city was to include and does of right include and comprise as part of the Camp and Magazine Street line of the said company a single track of street railway

on Camp street from Poeyfarre to St. Andrew street, and that the mayor be, and is hereby, authorized to enter into and execute with the New Orleans City Railroad Company a public act before the city notary amendatory of the specifications of the said act of October 2d, 1879, and confirmatory of the said act recognizing and declaring the said company to be entitled of right and lawfully possessed of the said single track on Camp street from Poeyfarre street to St. Andrew street, with the rights and franchises thereunto appertaining, as forming part of the Camp and Magazine Street line by the said adjudication and contract of October 2, 1879.

228 Adopted by the council of the city of New Orleans May 31, 1881.

Yeas—Delamore, Fagan, Fitzpatrick, Hager, Mealey, Walshe, Blank, Guiliotte.

JOS. A. SHAKESPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

Letter Marked Exhibit "E."

NEW ORLEANS, *June* 1, 1881.

Hon. Joseph A. Shakespeare, mayor.

DEAR SIR: I protest against your signing the ordinance passed yesterday amending the grant to the city railroad company as violative of the syndicate law and as disposing of a franchise without a proper equivalent.

The city railroad bought only what was advertised and named in the specifications, and are entitled to no more. This right is valuable and can be disposed of for a handsome bonus. I protest for the reason that the ordinance is violative of the rights of the Crescent City Railroad Company and should not be enacted without conditions recognizing these rights.

I protest also upon the ground that an opportunity is now presented for the city to obtain a proper value for the privileges disposed of, and for the reason that the city railroad company is not entitled to the consideration extended to the ordinance.

Respectfully, W. VAN BENTHUYSEN.

229 *Letter Marked Exhibit "F."*

NEW ORLEANS, *June* 1, 1881.

Hon. Jos. A. Shakespeare.

DEAR SIR: In connection with my note of this morning, I desire to say that the council have no right or power to interpret any act of their predecessors.

I have no doubt that the council at the time had the intention of including the Camp-street track from Poeyfarre street to Magazine-street market in the privileges sold to the city railroad company, but they do not do so, and the council have no more right to pass a retroactive law, which you know the Legislature cannot do.

I admit that the council can sell the right to this company from the present time if they choose to do so, and no objection could be made, except upon the score of selling it for less than it is worth and such objections as might arise when third parties are affected.

The city railroad company and the Crescent City Railroad Company now have a lawsuit based upon infamously false allegations made by the city railroad company, and I contend that a retroactive ordinance affecting this litigation injuriously against the Crescent City Railroad Company would enable this company to make damages against the city.

As I believe the city railroad company to be the most corrupt corporation that ever cursed a community, I, of course, believe that the ordinance should not be passed at all.

230 If, however, it is passed, it should date from to-day, for a consideration of only, if only, one dollar, and not be retroactive.

Respectfully, W. VAN BENTHUYSEN.

Motion to Vacate Order Permitting Plaintiff to File Amendment. Filed June 21, 1881.

N. O. City R. R. Co. *vs.* Crescent City Railroad Co.	No. 9239. U. S. Circuit Court, Eastern District of La.

On motion of John M. Bonner, solicitor for defendant, previous notice that this motion would be made having been given, it is ordered the plaintiff do show cause forthwith why the order of the 13th June, 1881, permitting the amendment of plaintiff's petition should not be discharged for irregularity and why the said amendment of the date of the 13th June, 1881, should not be taken off the file and the record restored to its original state on the grounds—

1st. That said amendment virtually asks a new bill.

2. This court has decided that the original bill, based on the contract of Oct. 2d, 1879, did not entitle the plaintiff to the relief prayed for in its said bill, and it is not competent for the plaintiff, by amendment, to set up a title acquired since the filing of its original bill and make said subsequently acquired interest a

231 ground for the relief prayed for in the original bill.

3. Said amendment is contrary to the rules of good equity pleading and should be withdrawn.

Order. Rehearing Refused, etc.

Extract from the Minute Book, April Term, 1881.

NEW ORLEANS, TUESDAY, *June* 21, 1881.

Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

N. O. CITY RAILROAD CO. *vs.* CRESCENT CITY R. R. CO. } No. 9239.

This cause came on this day to be heard on the complainant's application for a rehearing and was argued by counsel.

Upon consideration thereof it was ordered that said application be refused.

And thereupon the defendant's motion this day filed to strike out the amendment heretofore filed by said complainant came on to be heard and was argued by counsel. Whereupon, upon consideration thereof, it was ordered that said motion be denied.

It was further ordered that the demurrer already filed by the defendant stand as a demurrer as well to the amended as to the original bill of complaint herein.

Order Dismissing Bill.

Extract from the Chancery Order Book.

TUESDAY, *November 8th*, 1881.

232 NEW ORLEANS CITY RAILROAD COMPANY *vs.* CRESCENT CITY RAILROAD COMPANY. } No. 9239.

On motion of John M. Bonner, solicitor for defendant herein, and on showing that the said defendant filed its demurrer to the complainant's bill of complaint on the 6th day of June, 1881, and that the complainant has failed to set down said demurrer for argument within the time prescribed by rules of the Supreme Court of the United States for the courts of equity of the United States, and the said complainant having failed to apply to a judge of the court for further time so to do—

It is therefore ordered that the complainant's bill of complaint be, and the same is hereby, dismissed.

Motion and Order Dismissal Set Aside, etc. Entered and Filed November 9, 1881.

NEW ORLEANS CITY R. R. CO. *vs.* CRESCENT CITY R. R. CO. } No. 9239.

On motion of Carleton Hunt, solicitor for the complainant herein,

and on suggesting that a motion to dismiss complainant's bill was made and allowed yesterday, and that further time is required by complainant, it is decreed that the said order of dismissal be vacated and set aside and such further time allowed in the premises.

233 *Order. Bill Dismissed.*

Extract from the Minute Book, November Term, 1881.

NEW ORLEANS, WEDNESDAY, *December* 7, 1881.

Court met pursuant to adjournment.
Present: Hon. E. C. Billings, district judge.

N. O. CITY RAILROAD CO. *vs.* CRESCENT CITY RAILROAD CO. } No. 9239.

The bill or petition in this case was dismissed on the 8th November, 1881, because the general demurrer of defendant had not been set down for trial under the 38th equity rule. On the 9th November, 1881, the order dismissing the bill was set aside and the bill or petition reinstated.

As another rule day has elapsed without the demurrer having been set down for argument the clerk will please enter an order dismissing the plaintiff's petition or bill.

And John M. Bonner, the solicitor for the respondents, having read the above statement to the court and moved for an order dismissing said plaintiff's petition or bill for the reasons set forth above, it was ordered by the court that the motion be allowed and the said plaintiff's petition or bill be dismissed.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the originals on file and of record in this office.

234 Witness my hand and seal of said court, at the city of New Orleans, this 11th day of July, 1889.

[SEAL.] (Signed) E. R. HUNT, *Clerk.*

235 *Charter and By-Laws of the New Orleans City and Lake Railroad Co., together with City Ordinances and Contracts Relating to Same and to the New Orleans City Railroad Co.*, 1883.

236 The New Orleans City and Lake Railroad Co., organized May 17th, 1883.

Board of directors: Albert Baldwin, David Jackson, H. Gally, R. M. O'Brien, Jos. A. Walker, G. H. Braughn, L. Lacassagne, B. W. Taylor, Chas. E. Black, I. L. Lyons, Aug. Koenig, R. Sinnot.

Officers: Jos. A. Walker, president; F. Wintz, superintendent; W. E. Leverich, secretary; Braughn, Buck & Dinkelspiel, attorneys.

Office: No. 102 Canal street, New Orleans, La.

237 *Charter of the New Orleans City and Lake Railroad Co.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that on this seventeenth day of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh, before me, William Octave Hart, a notary public in and for this city and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared the following named persons, all of this city, viz:

Joseph A. Walker, herein appearing individually and as the agent and attorney-in-fact of J. Burrus McGehee, George Benson, John Thorn, Michael Hindes, Mrs. Delia Cox, Hermann Curtius, Mrs. Johanna Ahrens, Jordan A. Aycock, Mrs. Ada P. Denegre, Mrs. Mary Pierce Bruns, Jacob Feitig, Benjamin Miller, Mrs. Kate V. Wilson, Mrs. Juliana Stewart, Samuel Logan, John I. Adams, John I. Adams, Jr., Sebastian Swoop, Joseph A. Shakspeare, executor of the estate of John Geddes, Christian A. Winter, Miss Mathilda Maes, Louis Mathe, Miss Marie Pitot, and Mrs. Rosa Pitot; Richard M. O'Brien, herein appearing individually and as the agent and attorney-in-fact of Charles Whiting, of P. B. O'Brien, and Miss Jess Steven, as the executor of the estate of Will Steven, and as one
238 of the committee named in article IX hereof; Brownlee W. Taylor, herein appearing individually and as the agent and attorney-in-fact of Miss Louisa E. Slark, John Henry, Mrs. A. E. McStea, and as one of the committee named in article IX hereof; Laurent Lacassagne, herein appearing individually and as the agent and attorney-in-fact of Eugene Martin, Victor Donas, Miss Louisa T. Bowling, Miss Carmelite C. Bowling, and Joseph V. Chaery; Mrs. M. J. Feilder, representing the estate of W. R. Fielder; James W. Barnum, representing Daniel E. Colton, Mrs. W. L. Colton, and Mrs. James W. Barnum; Isaac L. Lyons, herein appearing individually and as the agent and attorney-in-fact of the Mutual National Bank and as one of the committee named in article IX hereof; Jean Mule; Richard Sinnott, herein appearing individually and as the agent and attorney-in-fact of John H. Menge; Henry Wenger, Albert Baldwin, John Stumpf, Michael Stumpf, Jr.; Edward J. Demarest, herein appearing individually and as the agent and attorney-in-fact of Mrs. Ida T. Demarest; Hypolite Gally, herein appearing individually and as agent and attorney-in-fact of the New Orleans Insurance Company; Gustave Kohn, Pierre Cauteron, August Benedic; Robert Y. Black, herein representing Mrs. H. A. MacGregor; August Koenig, Theodore Koenig; Dennis Sheen, individually and as representing his wife, Mrs. Aurora Sheen; Albert G. Brice, herein representing the estate of Henry Bidwell; Mrs. Magdalena Langhoff, Theodore Paderas, John G. Parham, Nicholas Miller; Honore Pottier, herein appearing individually and as the agent and attorney-in-fact of P. Alexander Lambert; John Jane,

Edward Eisenhauer; Fergus G. Lee, herein appearing individually and as the agent and attorney-in-fact of Fergus S. Lee; George M. De Sha, Francis Schuler; Peter Glaser, herein representing Mrs. Margaret Glaser; Henry J. Vose, John G. E. Aurich, James M. Kinberger, Frank W. Kinberger; Honore Doussan, herein appearing individually and as the agent and attorney-in-fact of Mrs. Felicie Robert; Robert Strong, herein representing Mrs. Johanna Strong; Henry C. Boucher, herein appearing individually and as the agent and attorney-in-fact of George C. Babcock, Miss Cora L. Babcock, Miss Louise B. Babcock, and Mrs. Mary A. Leverich; Oscar Isnard, herein appearing individually
239 and as the agent and attorney-in-fact of Mrs. John J. Isnard; Charles Vatinel, herein representing Miss Clorinde Vatinel; Charles T. Chauvierre, Wm. S. E. Sevey, Alexander Godeux, George Le Sassier, M. Bloch, Hyacinthe Rousselin, Joseph Larroque, Louis Imholte, Joseph Rialland, Louis Pilger, Louis Kottwitz, Joseph Flanner, William S. Devan, Mrs. D. Kennedy; Hugh W. Brown, a member of the firm of J. M. Seixas & Co., representing Mrs. C. E. Simms and Philip Simms; James Jackson, herein representing Duvall W. Young and Mrs. Eudora B. Cox; Frank A. Lee, herein representing the firm of Frank A. Lee & Co.; Frank Vatter, Isaac H. Stauffer, Augustus W. Brette; John Rhodes, herein representing Francis Penna; A. Ringgold Brousseau; Charles E. Black, herein appearing individually as a member of the firm of Graham, Black & Co. and as the agent and attorney-in-fact of Samuel L. Graham and E. J. Van Court; Robert Manson, herein appearing individually and as representing the estate of Chas. Manson; Robert Mouat; Joseph Bayle, herein appearing individually and as representing J. A. Seignouret, B. Cestia, B. Talamon, Jules Ducasse, and Martin Tucoo; David Jackson, herein appearing individually and as the agent and attorney-in-fact of Thomas Gilmore, Joseph C. Gilmore, Mrs. E. J. Springbett, and John R. Jaeger; Ernest A. Michel, herein appearing as a member of the firm of P. & E. Michel; William E. Leverich, herein representing Maximillian A. Dauphin and David McCoard; Edmund J. Hart, herein appearing individually and as a member of the firm of E. J. Hart & Co.; John Tolch, herein representing Mrs. C. Potthoff, the executrix of the estate of Charles Potthoff; William B. Schmidt, herein representing Mrs. Henrietta W. Kaiser; George H. Braughn, appearing individually and as the agent and attorney-in-fact of Phillipp Meyer; Emanuel Frank; Charles F. Buck, herein appearing individually and as the agent and attorney-in-fact of David Bernhardt; Max Dinkelspiel, Jules Cassard, David S. Bryon, G. A. Manthey, Euclid Borland; Paul O. Fazende, herein appearing as a member of the firm of Fazende & Seixas; Dennis McRedmond, William N. Grunewald, B. Winchester Bowling; Elmore Dufour, herein representing Emile Tanneret, Felix Formento, and Delord Burthe; Herman H. Bierhorst; John
240 Henry Ehrmann, herein representing Jean B. Magnard; John C. Muller, William C. Watkins; Hermann F. Klumpp, herein representing C. C. W. Muller; David H. Syme, herein appearing for John Syme; Ephraim K. Converse, herein representing

the minor children of W. P. Converse, Jr., Mrs. A. D. Converse, J. W. Noyes, agent; Mrs. E. B. Noyes, and Mrs. Pauline Pamar; Alfred Grima; Charles G. Andry, herein appearing as the agent of Baron A. Chaurand, the usufructuary of the estate of Mrs. Athenais Chaurand; Mrs. Octavie Deneufbourg; Frederick Wintz, herein representing Rudolph Stahl and William Collins; and James Fahey, herein representing Raymond Pochelu.

And the said appearers severally declared that, availing themselves of the provisions of the statutes of the State of Louisiana relative to the organization of corporations in this State, they have covenanted and agreed and do by these presents covenant, agree, and bind themselves and those whom they represent, as well as those who may hereafter become associated with them, to form themselves into and constitute a corporation for the objects and under the stipulations, regulations, and obligations following, to wit:

Article I.

The corporate name of this association shall be the New Orleans City and Lake Railroad Company, and by that name it shall have authority to sue and be sued, and shall have and enjoy corporate existence during the full term of ninety-nine years from the date hereof.

Article II.

The place of business and legal domicile of this corporation shall be located in the city of New Orleans.

Article III.

The objects of this corporation are to acquire by purchase or otherwise from the New Orleans City Railroad Company all its real estate, lines of railroads and their equipments, the rights of way, franchises, and all other privileges which said New Orleans City Railroad Company now has and enjoys by virtue of any and all contracts and agreements with the city of New Orleans or otherwise; to
241 maintain and work said lines of railroads (propelled by horse, steam, or other power), and also to purchase, construct, and maintain, in the future, other lines of city railroads, if the same be deemed expedient, with suitable turnouts and branches, for the purpose of carrying passengers, and generally to exercise such incidental powers and privileges as are hereby or may hereafter be conferred upon this corporation for purchasing, constructing, and working said railroads.

Article IV.

The capital stock of this corporation is hereby fixed at one million five hundred thousand dollars, to be increased if necessary to two million dollars, represented by fifteen thousand shares of one hundred dollars each; said shares to the extent of one million four hundred thousand dollars of stock to be used for and applied to the payment of part of the purchase price of the property, lines of railroads,

franchises, etc., of the New Orleans City Railroad Company, as herein contemplated, by issuing and transferring to the stockholders of the last-named company for the capital stock thereof held by them an equal number of shares of the capital stock of this corporation; said stock will then be fully paid-up stock.

For the remainder of the price of said purchase from the New Orleans City Railroad Company, this corporation is to assume all the mortgage and other indebtedness of said company, and also all the obligations by said company contracted in obtaining rights of way, franchises, and other privileges from the city of New Orleans and State of Louisiana.

Article V.

The said corporation is to assume all the obligations of "The New Orleans City Railroad Company," a corporation organized June 15, 1860, by act before Edward Barnett, late notary public in this city.

Article VI.

This association shall go into operation from and after the date of this act.

Article VII.

This association shall have a corporate seal, the device of which shall be a crescent within a circle with one horse and a car and the name of the corporation traced thereon.

242 Article VIII.

These articles of association may be modified or altered, and the capital stock may be increased to any sum not exceeding two millions of dollars, in the manner provided by law, with the consent of two-thirds in amount of all the stockholders, obtained in general meeting, convened after thirty days' notice. Whenever any increase of capital shall be duly authorized, sixty days' notice of the same shall be given in two newspapers published in the city of New Orleans, within which time stockholders shall have the privilege of taking additional shares in proportion to the amount of their stock, and any shares not taken at the expiration of that time may be disposed of by the directors for the benefit of the company, but not at less than par value.

Article IX.

All powers of this corporation shall be vested in a board of directors consisting of twelve persons, each of whom shall hold, in his own name or in the name of a firm of which he is a member, at least $5,000 of the capital stock of the company.

But for the purpose of effecting the above-contemplated purchase of the real estate, lines of railroads, franchises, etc., of the said New Orleans City Railroad Company there shall be a committee to consist of the following-named incorporators, to wit: Messrs. R. M. O'Brien, B. W. Taylor, and I. L. Lyons, which committee shall have

full power and authority to negotiate with said company for said purchase upon the terms, conditions, and stipulations as set forth in articles III and IV of this charter, and to sign and accept from said company a notarial act of sale and transfer to this corporation of all the real estate, lines of railroads, franchises, and other property of said New Orleans City Railroad Company, and to bind the present corporation for the payment of all the mortgage and other indebtedness of said company, and to assume all its obligations in favor of all corporations or individuals of every nature and kind whatsoever. With the completion of said act of sale and transfer the existence of said committee shall come to an end.

243 Article X.

The following-named stockholders, viz., Albert Baldwin, H. Gally, David Jackson, R. M. O'Brien, Jos. A. Walker, B. W. Taylor, Charles E. Black, I. L. Lyons, Aug. Koenig, Laurent Lacassagne, R. Sinnott, and Geo. H. Braughn, shall compose and are hereby constituted the first board of directors, who shall at their first meeting elect one of their number president, and said board shall serve until superseded by their successors, who shall be elected as provided in article eleventh.

Article XI.

On the third Monday in December, eighteen hundred and eighty-three, and annually thereafter, an election for twelve directors by the stockholders shall be held at the office of the corporation, of which election previous notice of at least ten days shall be given in two newspapers published in the city of New Orleans.

Article XII.

A plurality of votes (counting one vote for each share of stock voted upon) shall be sufficient to elect directors, who shall at their first meeting after their election choose one of their number for president of the company, who shall be elected by a majority of the board, and upon whom all citations and other legal process shall be served.

It shall be the duty of the president to preside at all meetings of the board, and in case of his absence or inability to act the board shall elect one of their members president *pro tem.*, who shall for the time being exercise the full powers of president.

All elections shall be by ballot under the superintendence of inspectors appointed by the board from the stockholders—not directors nor candidates for election—at least one week prior to any election.

Article XIII.

Seven directors shall be necessary to form a quorum, and their decision shall be a valid corporate act, except for the purchase of the right of way for or in building new roads or for the purchase of real estate, which shall require a vote of three-fourths of the whole board of directors.

244 Article XIV.

Any director being about to absent himself for a period of six months or less may nominate a substitute in his stead, provided said substitute shall have in his own name not less than fifty shares of the capital stock of the company, and provided also that said substitute be elected by the board of directors for the time being.

Article XV.

The board of directors shall elect a secretary and appoint all clerks and agents, and may remove the same at pleasure, and shall fix the salaries of all officers of the corporation and the amount of security that shall be required from all said officers, clerks, and agents.

And they shall have power to make by-laws, rules, and regulations, and to amend or alter the same whenever the interests of the corporation may require it, and shall also have power to supply any vacancies that may occur in their board. Such vacancies may be declared on account of death, resignation, want of the requisite number of shares, insolvency, or absence without leave for three successive months.

Article XVI.

Books for the registry and transfer of shares of the capital stock shall be opened and kept subject to the restrictions directed by the by-laws. All transfers of shares shall be made on said books and signed by the shareholder or his attorney, and which said books the directors may close as often as convenience or expediency may require, but not for a longer period than ten days at a time.

Article XVII.

A failure from any cause to elect directors on the day named for that purpose shall not dissolve this company, but the directors then in office shall hold over until another election is held, of which notice shall forthwith be given, as provided in article twelve, and continued until an election is had.

Article XVIII.

Each shareholder, at all meetings for the election of directors or other purposes, shall be entitled directly or by proxy to one
245 vote on each share of stock held by him, provided that he shall have owned his stock at least three months prior to the day of voting.

Article XIX.

No two partners, whose stock is in the name of the commercial firm of which they are members, shall be eligible at the same time as directors of this company, nor shall a director of any other city railroad or his partner be a director of this company.

Article XX.

Minutes of all the proceedings of the board of directors shall be

kept by the secretary and verified by the president, and the president and secretary shall sign all notes, drafts, checks, certificates of stock, contracts, and all other evidences of debt of this corporation.

Article XXI.

No stockholder shall be in any manner liable for the faults or debts of the corporation, nor shall any informality in organization have the effect of exposing them to any liability.

This corporation may be dissolved by the stockholders at a general meeting convened as provided in article eighth.

Whenever "notice" is used in this charter it shall be construed to mean publication in two of the newspapers of this city three times during each of the ten days mentioned as the period for which notice is required to be given.

Article XXIII.

The liquidation of the affairs of this association shall be made by three commissioners appointed by the stockholders at a meeting convened for that purpose, after sixty days' previous notice in two newspapers published in New Orleans. Said liquidators shall be solvent persons, residents of this city, not indebted to the association. Their term of office shall be assigned and all necessary power shall be conferred on them.

The period for liquidation shall be fixed, as well as their compensation, in such manner as the stockholders may, by resolution in general meeting convened, determine.

246 Article XXIII.

The respective interests of the parties to this act are declared to be as follows, to wit:

	No. shares.		No. shares.
B. W. Taylor, R. M. O'Brien, I. L. Lyons, committee provided by article IX of the charter	5,566		
P. B. O'Brien	450	John Henry	373
J. A. Walker	301	J. A. Seignouret	300
I. H. Stauffer	300	E. J. Hart	245
P. A. Lambert	215	Mrs. H. W. Kaiser	200
B. Miller	200	Mrs. C. E. Simms	162
J. C. Muller	150	Charles Witing	135
Jacob Feitig	130	Minor children of W. P. Converse, Jr.	126
H. Pottier	121	Mrs. J. Stewart	109
R. M. O'Brien	112	P. & E. Michel	108
Joseph Bayle	108	P. Simms	101
Miss L. E. Slark	108	Joseph Rialland	100
Nicholas Miller	100	R. Sinnott	97
Mrs. A. E. McStea	100	J. V. Chaery	95
Widow J. J. Isnard	96	A. R. Brousseau	88
J. M. Kinberger	90	Theo. Paderas	85
Graham, Black & Co.	85	August Koenig	80
John Stumpf	80		

		No. shares.		
	Mrs. Johanna Ahrens	75	Estate of Mrs. Athenais Chaurand	78
	Dennis McRedmond	70	Mrs. Aurora Sheen	70
	I. L. Lyons	67	George Le Sassier	69
	E. J. Demarest	66	A. Benedic	66
	H. C. Boucher	63	Estate of Charles Manson	66
	Emile Tanneret	63	Pierre Couteron	62
	B. W. Taylor	60	Robert Mouat	58
	J. G. E. Aurich	57	E. J. Hart & Co.	57
	Daniel E. Colton	55	Alex. Godeux	55
	J. H. Menge	55	Laurent Lacassagne	54
	S. L. Graham	61	John Syme	53
	Herman Curtuis	53	G. H. Braughn	50
	A. Baldwin	50	J. B. Magnard	50
	David Jackson	50	Henry Wenger	50
	R. Stahl	50	Jean Mule	45
	E. J. Van Court	50	Louis Pilger	49
	H. Gally	50	Robert Manson	45
	Estate Will. Steven	42	B. Tallamon	41
	Duvall W. Young	48	M. A. Dauphin	43
	H. Rousselin	42	E. Frank	43
	Frank Vatter	41	F. Formento	40
	Est. Chas. Potthoff	47	Mrs. Rosa Pitot	41
247	W. N. Grunewald	40	John Thorn	39
	Estate Jno. Geddes	45	Francis Penna	35
	J. Larroque	40	B. Cestia	35
	Oscar Isnard	35	C. T. Chauviere	34
	Mrs. M. A. Leverich	32	Mrs. O. Denenfbourg	32
	M. Stumpf, Jr.	32	F. W. Kinberger	30
	Mrs. H. A. MacGregor	32	Louis Mathe	30
	Mrs. I. T. Demarest	30	W. Collins	30
	Charles E. Black	30	Miss Pauline Pamar	30
	F. Schuler	30	Henry J. Vose	30
	Raymond Pochelu	30	Theo. Koenig	27
	S. Swoop	30	J. Ducasse	27
	Estate of Henry Bidwell	28	Mrs. A. D. Converse	26
	Louis Imholte	28	J. Jane	25
	C. C. W. Muller	27	Frank A. Lee & Co.	27
	Gustave Kohn	25	D. McCoard	25
	Joseph Flanner	25	Delord Burthe	25
	Aug. Wm. Brette	25	Thomas Gilmore	25
	C. F. Buck	25	Phillip Meyer	25
	Mrs. Delia Cox	25	Miss M. Maes	24
	John R. Jaeger	25	Mrs. E. B. Cox	21
	L. Kottwitz	24	M. Bloch	20
	Alfred Grima	21	J. T. Aycock	20
	Honore Doussan	20	Mrs. Felicie Robert	20
	G. Benson	20	Jules Cassard	20
	J. I. Adams	20	Max Dinkelspiel	15
	Mrs. M. J. Springbett	20	William S. Devan	19
	Mrs. Johanna Strong	20		

	No. shares.		No. shares.
Mrs. M. Glasser	19	Ed. Eisenhauer	15
New Orleans Insurance Company	15	Fergus S. Lee	15
Mrs. K. V. Wilson	15	Mrs. Jas. W. Barnum	14
Dennis Sheen	14	Victor Donas	11
Geo. C. Babcock	13	Miss L. T. Bowling	11
Miss C. C. Bowling	11	John G. Parham	10
Mrs. Mag. Langhoff	10	David Bernhardt	10
H. H. Bierhorst	10	J. C. Gilmore	10
B. Winchester Bowling	10	Samuel Logan	10
M. Tucoo	10	Wm. S. E. Sevey	10
Miss Jess. Steven	10	Miss Clor. Vatinel	10
William C. Watkins	10	C. A. Winter	10
Mrs. A. P. Denegre	9	J. B. McGehee	9
D. S. Bryon	8	Eugene Martin	9
G. A. Manthey	6	Miss Mary P. Bruns	8
248 Michael Hindes	5	Mrs. W. L. Colton	5
Estate of W. R. Fielder	4	Mrs. D. Kennedy	5
Miss Louise B. Babcock	4	Miss Cora L. Babcock	4
Mrs. E. B. Noyes	3	Fergus G. Lee	4
Miss Marie Pitot	3	E. Borland	4
G. M. De Sha	2	J. W. Noyes, agent	3
John I. Adams, Jr.	1	Fazende & Seixas	3
		Mutual National Bank	2
			2
Total number of shares			15,000

Thus done and passed, at the city of New Orleans aforesaid, the day, month, and year first above written in presence of John T. Fitzgerald and Joseph A. Dare, witnesses of lawful age, expressly required and domiciliated in this city, who hereunto sign their names with said appearers and me, notary.

(Qriginal signed)

R. Sinnott.	J. A. Walker.	H. Wenger.
A. Baldwin.	I. L. Lyons.	Laurent Lacassagne.
John Stumpf.	M. Stumpf, Jr.	H. Gally.
E. J. Demarest.	Gustave Kohn.	Pierre Couterou.
B. W. Taylor.	A. Benedic.	R. Y. Black.
August Koenig.	Thos. Koenig.	Dennis Sheen.
A. G. Brice.	Theo. Paderas.	John G. Parham.
Nicholas Miller.	H. Pottier.	his
Ed. Eisenhauer.	Fergus G. Lee.	J. x Jane.
George M. De Sha.	F. Schuler.	mark.
Peter Glaser.	Henry J. Vose.	J. G. E. Aurich.
J. M. Kinberger.	F. W. Kinberger.	H're Doussan.
Robert Strong.	H. C. Boucher.	Oscar Isnard.
Charles Vatinel.	C. T. Chauviere.	William S. E. Sevey.
Alexander Godeux.	George Le Sassier.	M. Bloch.
H. Rousselin.	J. Larroque.	Louis Imholte.

his
Joseph x Rialland.
mark.
James Jackson.
I. H. Stauffer.
A. R. Brousseau.
Robert Mouat.
E. A. Michel.
E. J. Hart.
W. B. Schmidt.
E. Frank.
James W. Barnum.
Louis Pilger.
Joseph Flanner.
Mrs. D. Kennedy.
Frank A. Lee.
Aug. Wm. Brette.
Charles E. Black.
R. M. O'Brien.
W. E. Leverich.
John Tolch.
G. H. Braughn.
Charles F. Buck.
Jules Cassard.
L. Kottwitz.
William S. Devan.
Hugh W. Brown.
Frank Vatter.
John Rhodes.
Robert Manson.
David Jackson.
her
Mrs. M. x J. Fielder.
mark.
Max Dinkelspiel.
D. S. Byron.

249

G. A. Manthey.
Jean Mule.
W. N. Grunewald.
Joseph Bayle.
J. C. Muller.
D. H. Syme.
E. K. Converse.
James Fahey.
John T. Fitzgerald.
E. Borland.
Dennis McRedmond.
B. Winchester Bowling.
J. H. Ehrman.
Wm. C. Watkins.
Alfred Grima.
O. Denenfbourg.
F. Wintz.
Fazende & Seixas.
Mrs. Magalena Langhoff.
Elmore Dufour.
H. H. Bierhorst.
C. C. W. Muller,
By H. F. Klumpp.
Charles G. Andry.
Joseph A. Dare.

W. O. HART,
Notary Public.

I, the undersigned, recorder of mortgages in and for the parish of Orleans, State of Louisiana, do hereby certify that the above and foregoing act of incorporation of the New Orleans City and Lake Railroad Company was this day duly recorded in my office in Book No. 226, folio 407 *et seq.*

New Orleans, May 18, 1883.

GEORGE GUINAULT,
Deputy Recorder.

STATE OF LOUISIANA, }
Parish of Orleans. }

I, William Octave Hart, a notary public in and for this parish and State, do hereby certify that the above and foregoing is a true and correct copy of the original charter of the "New Orleans City and Lake Railroad Company" and of the certificate of recordation of same of the recorder of mortgages of this parish on file and of record in my office.

In faith whereof I hereto set my hand and affix my official seal, at New Orleans, this May 19, 1883.

W. O. HART,
Notary Public.

250 *By-Laws of the New Orleans City and Lake Railroad Co.*

SECTION I.—*Of Meetings.*

The board of directors shall meet on the second Wednesday of each month, at the office of the company, at such hour as the board may from time to time appoint.

The president may call special meetings of the board at his discretion, and he shall do so on the written request of any three of the directors.

At all special meetings the business for which it was expressly called shall have preference over all other business.

All motions to adjourn, to lay on the table, all calls of previous question, and all appeals from the decision of the chair on points of order shall not be debated; but the president, in stating his decisions on questions of order, may assign a reason therefor.

SECTION II.—*Of Committees.*

There shall be a finance committee, consisting of three directors, who shall have a general supervision of the pecuniary condition of the company.

It shall be their duty to examine the books, accounts, and vouchers of all officers of the company at least once in every month and report to the board of directors thereon.

All reports of committees shall be in writing, signed by a majority of the committee.

SECTION III.—*Of Disabilities.*

No officer or employee of the company except the president and attorney shall be a member of the board of directors, and the
251 acceptance of any office or employment by a director except those specified shall be deemed a resignation of his seat as a member of the board of directors; but a director may temporarily perform the duties of an officer during a vacancy or disability.

SECTION IV.—*Of the President.*

The president shall have the chief management and supervision of the affairs of the company, and he shall annually prepare and submit to the stockholders at the annual election an account of the operations of the company and a statement of its property and resources, its funded or floating debt (if any), and its outstanding contracts and contingent liabilities.

SECTION V.—*Of the Secretary.*

It shall be the duty of the secretary to be present at all the meetings of the board of directors; to keep full and perfect minutes of all proceedings; to keep the books and records of the company; to give notice to the directors of all special meetings, and whenever

any special committee shall have been appointed, in pursuance of a resolution of the board, to furnish the chairman of said committee with a copy of the resolution and the names of the members composing said committee. He shall be the registrar of all transfers of stock under such regulations as the finance committee or the board of directors shall prescribe, and he shall generally perform all the duties pertaining to the office under the direction of the president. He shall receive and receipt for all moneys belonging to the company and deposit the same forthwith in a bank, to be selected by the board of directors, to the credit of the "New Orleans City and Lake Railroad Company," and the same shall only be drawn from the bank by a check of the president, countersigned by the secretary. He shall disburse all moneys directed and authorized by the board of directors; shall keep true and accurate accounts of all receipts and disbursements, and shall pay no bill or account unless certified by the president or finance committee, and such certificate shall be filed therewith. He shall, at the annual meetings, render an account of the financial condition as well as a general statement of the affairs of the company, and once every month he shall furnish to the board a statement of the amount of the receipts and expenditures of the preceding month.

252 SECTION VI.—*Of the Superintendent.*

The superintendent shall have, subject to the direction of the president, the special superintendence of the tracks and cars and the repairs and running of the roads and a general supervision of the depots, stables, and shops and over the conductors, starters, drivers, hostlers, mechanics, and laborers in the employ of the company. He shall, in all cases, when persons under him leave the employ of the company, obtain a settlement of their account. He shall furnish each driver and conductor with a printed copy of the regulations issued for their government, and shall see that the same are enforced. He may suspend conductors, drivers, starters, or stablemen for misconduct or incapacity, and shall report such suspension to the president without delay. He shall examine and certify the pay-rolls and bills for work done or purchases made by him or under his supervision.

He shall act as the general out-door agent of the company in all matters specially intrusted to him by the president or board of directors, and once every month he shall make a full written report to the board of directors, including the day preceding the meeting of the board at which his report is handed in, giving information of all matters under his charge and of any changes which may have taken place in the condition of the property under his supervision.

SECTION VII.—*Of the Fiscal Year.*

The fiscal year of the company shall commence on the first day of December and end on the thirtieth day of November in each year; and it shall be the duty of the finance committee at the end of each fiscal year to make a thorough examination of the books,

accounts, monies, and affairs of the company and to report the result of this examination to the board of directors in writing.

SECTION VIII.—*Of Dividends.*

Dividends shall be declared quarterly, provided the profits of the company warrant the board of directors in declaring the same.

253

SECTION IX.—*Of Transfers.*

Stock can only be transferred upon the surrender of the certificate thereof to the president, who shall see that the same is cancelled by writing "cancelled" prominently across the face thereof and the erasure of the president's signature therefrom before issuing a new one, the cancelled certificate to be filed away.

No transfer shall be made on the books of the company for at least ten days next preceding the annual election for directors nor for ten days next prior to the time appointed for the payment of any dividend.

No certificates shall be issued in the place of one stated to be lost unless by the production of legal evidence of the loss, say, by an advertisement by the company of at least thirty days (at the expense of the applicant), setting forth the number of the certificate lost and of the number of shares therein called for, the party claiming a new certificate to furnish satisfactory security to indemnify the company in case of a demand for the stock on the original certificate.

SECTION X.—*Of Deeds, etc.*

Deeds of property and all legal documents shall be signed by the president and secretary when authorized by the board of directors. No document shall be signed or countersigned in blank.

SECTION XI.

The order of business of the board of directors shall be:

1. The calling of the roll.
2. The reading of the minutes and their adoption.
3. Communications and reports from the president.
4. Reports from the secretary.
5. Reports from the engineer and superintendent.
6. Reports from standing committees.
7. Reports from special committees.
8. Unfinished business.
9. New business.

SECTION XII.—*Of By-Laws.*

The by-laws may be altered or amended at any stated meeting of the board of directors, provided notice in writing of the proposed amendment shall have been given at the previous meeting.

254 *Charter of the New Orleans City Railroad Company.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans.

Be it known that this fifteenth day of June, in the year of our Lord one thousand eight hundred and sixty, and of the Independence of these United States of America the eighty-fourth, before me, Edward Barnett, a notary public in and for the city and parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, personally came and appeared the persons hereinafter named and undersigned, who severally declared that, availing themselves of the provisions of the statutes of the State of Louisiana relative to the organization of corporations in this State, they have covenanted and agreed, and do by these presents covenant, agree, and bind themselves and those whom they represent, to form themselves into and constitute a corporation for the objects and under the stipulations, regulations, and obligations following, to wit:

Article I.

The corporate name of this association shall be the "New Orleans City Railroad Company."

Article II.

The place of business and legal domicil of this corporation shall be located in the city of New Orleans.

Article III.

The object of this association is to construct and maintain city railroads, with suitable turnouts and branches, for the purpose of carrying passengers and generally to exercise such incidental powers and privileges as are hereby or may hereafter be conferred on them for building and working city railroads.

255 Article IV.

The capital stock of this corporation is hereby fixed at one million of dollars, represented by ten thousand shares of one hundred dollars each. Five per cent. of each subscription shall be payable at the time of signing these articles and the remainder shall be paid in the manner directed by the board of directors, provided that not more than ten per cent. of said subscription shall be called for at any one time and not oftener than once within any thirty days.

Should any subscriber refuse or neglect to pay punctually his installment or installments as the same mature and fall due interest thereon at the rate of eight per cent. per annum shall be added thereto from maturity till payment; and if any subscriber neglects or refuses to pay his installment or installments within thirty days after the specified time of payment the board of directors reserve to themselves the right of causing any share or shares upon which any

installment may be due to be sold at public auction or otherwise after ten days' previous notice thereof by advertisement.

Article V.

The said corporation hereby assumes all the obligations of John B. Slawson, as principal, and Henry Hart, Frederick Wintz, and Patrick Irwin, as security, in and to the contract of purchase of right of way for the construction of city railroads in the city of New Orleans, as per act passed before Charles E. Fortier, city notary, on the seventh day of February, eighteen hundred and sixty, and obligates itself to construct said city railroads according to the plan and specifications and within the time and in the manner set forth in said notarial act, which is here referred to and made part hereof, and also hereby expressly agrees to assume and pay the bonus of one hundred and thirty thousand dollars therein paid and agreed to be paid by the said purchasers, in the following manner, to wit:

The cash payment of twenty-six thousand dollars advanced by the said purchasers shall be applied to the payment of the installments on the stock respectively subscribed by the said J. B. Slawson, Henry Hart, Frederick Wintz, and Patrick Irwin in the proportion of their interests in the said cash payment, respectively, so far as the said sum will apply in the payment of their said installments as they become due and for the balance of said purchase price,
256 viz: One hundred and four thousand dollars, for which the aforesaid purchaser has furnished his four several promissory notes for the sum of twenty-six thousand dollars each, drawn by himself to the order of Henry Hart, Frederick Wintz, and Patrick Irwin and by them endorsed, dated the seventh day of February, eighteen hundred and sixty, and payable at the Louisiana State Bank in this city at one, two, three, and four years from date, with six per cent. interest per annum from date until paid, which said notes were paraphed by the aforesaid notary to identify them with the aforesaid act, and which said notes are hereby assumed by this corporation and expressly agreed to be paid by the company at maturity, according to their tenor and effect.

Article VI.

This association shall go into operation from and after the date of this act.

Article VII.

This association shall have a corporate seal, the device of which shall be a crescent within a circle, with two horses and a car and the name of the corporation traced thereon.

Article VIII.

These articles of association may be modified or altered, and the capital stock may be increased to any sum not exceeding two millions of dollars, in the manner provided by law, with the consent of two-thirds in amount of all the stockholders obtained in general meeting convened after thirty days' notice. Whenever any increase

of capital shall be duly authorized sixty days' notice of the same shall be given in two newspapers published in the city of New Orleans, within which time stockholders shall have the privilege of taking additional shares in proportion to the amount of their stock, and any shares not taken at the expiration of that time may be disposed of by the directors for the benefit of the association, but not at less than par value.

Article IX.

All powers of this corporation shall be vested in a board of directors, consisting of twelve persons, each of whom shall hold in his own right at least twenty-five hundred dollars of the capital stock of said association.

257 Article X.

The following-named stockholders, viz., John B. Slawson, Henry Hart, Frederick Wintz, Patrick Irwin, Alfred Penn, Samuel Smith, Armand Heine, James O. Nixon, L. E. Forstall, Josiah Cole, J. J. E. Massicot, and Geo. W. Helme, shall compose and are hereby constituted the first board of directors, who shall at their first meeting elect one of their number president, and said board shall serve until superseded by their successors, who shall be elected as provided in article eleventh.

Article XI.

On the third Monday in December, eighteen hundred and sixty-one, and annually thereafter, an election for twelve directors by the stockholders shall be held at the office of the corporation, of which election previous notice of at least ten days shall be given in two newspapers published in the city of New Orleans.

Article XII.

A plurality of votes (counting one vote for each share of stock voted upon) shall be sufficient to elect directors, who shall at their first meeting after their election choose one of their number for president of the association, who shall be elected by a majority of the whole board and upon whom all citations and other legal processes shall be served.

It shall be the duty of the president to preside at all meetings of the board, and in case of his absence or inability to act the board shall elect one of their members president *pro tem.*, who shall for the time being exercise the full powers of president.

All elections shall be by ballot, under the superintendence of inspectors appointed by the board, from among the stockholders (not directors) at least one week prior to any election.

Article XIII.

A majority of the board of directors shall be necessary to form a quorum and a decision of such majority shall be a valid corporate act, except for the purchase of the right of way for or in building

new roads or for the purchase of real estate, which shall require a vote of three-fourths of the whole board of directors.

258 Article XIV.

Any director being about to absent himself for a period of six months or less may nominate a substitute in his stead: Provided, said substitute shall have in his own right not less than twenty-five shares of the capital stock of the company: And provided also, that said substitute be elected by the board of directors for the time being.

Article XV.

The board of directors shall appoint a secretary and all clerks and agents and may remove the same at pleasure, and shall fix the salaries of all officers of the corporation and the amount of security that shall be required from any of said officers and agents.

Said board may also delegate such power in the transaction of the ordinary business of the company to committees of their own body or their officers or agents as they may deem expedient, and may also appoint agents within and without this State, under such conditions as to them shall seem proper; and they shall have power to make by-laws, rules, and regulations and to amend or alter the same whenever the interest of the corporation may require it, and shall also have power to supply any vacancies that may occur in their board. Such vacancies may be declared on account of death, resignation, want of the requisite number of shares, insolvency, or absence without leave for three successive months.

Article XVI.

Books for the registry and transfer of shares of the capital stock shall be opened and kept, subject to the restrictions directed by the by-laws. All transfers of shares shall be made on said books and signed by the shareholder or his attorney, and which said books the directors may close as often as convenience or expediency may require, but not for a longer period than ten days at a time. Should any subscriber to the stock desire to transfer the same previous to full payment having been made he shall be permitted to do so by a substitute of the subscription of the party purchasing: Provided, that the substituted subscription is satisfactory to the board of directors.

259 Article XVII.

A failure from any cause to elect directors on the day named for that purpose shall not dissolve this association, but the directors then in office shall hold over until another election is held, of which notice shall forthwith be given as provided in article 12, and continued until an election is had.

Article XVIII.

Each shareholder, at all meetings for the election of directors or other purposes, shall be entitled directly or by proxy to one vote on

each share of stock held by him, provided that no stockholder shall vote in his own name over five hundred votes, and provided also that he shall have owned his stock at least three months prior to the day of voting.

Article XIX.

No two partners whose subscription is in the name of the commercial firm of which they are members shall be eligible at the same time as directors of this association, nor shall a director of any other city railroad or his partner be a director of this company.

Article XX.

Minutes of all the proceedings of the board of directors shall be kept by the secretary and verified by the president, and the president and secretary shall sign all notes, drafts, checks, certificates of stock, contracts, and all other evidences of debt of this corporation.

Article XXI.

The board of directors may accept provisionally any power or privilege conferred on this association by any amendment of the law under which the same is formed or by the adoption of any new act or ordinance of the Legislature or city council, but the final acceptance of any such power or privilege shall be determined by a vote of a majority in amount of the stockholders.

Article XXII.

The liquidation of the affairs of this association shall be made by three commissioners, appointed by the stockholders at a meeting convened for that purpose, after sixty days' previous notice in
260 two newspapers published in New Orleans. Said liquidators shall be solvent persons, residents of this city, not indebted to the association; their term of office shall be assigned; all necessary power shall be conferred on them. The period for liquidation shall be fixed, as well as their compensation, in such manner as the stockholders may, by resolutions in general meeting convened, determine.

Article XXIII.

The names and respective interests of the parties to this act are declared to be as follows, to wit:

Names.	No. of shares.	Amount.
J. B. Slawson	2,000	$200,000
Frederick Wintz	1,000	100,000
Henry Hart	1,000	100,000
Patrick Irwin	1,000	100,000
Alfred Penn	1,000	100,000
Samuel Smith & Co.	1,000	100,000
A. & M. Heine	975	97,500
Josiah Cole	260	26,000
Peschier & Forstall	200	20,000

Names.	No. of shares.	Amount.
J. L. Warner & Co.	200	$20,000
Jas. O. Nixon	200	20,000
Geo. W. Helme	200	20,000
E. J. Hart	100	10,000
S. T. Taylor	100	10,000
Michel & Koontz	100	10,000
John B. Schiller	100	10,000
William Massey	100	10,000
Jamison & McIntosh	100	10,000
Mrs. S. H. Wood	100	10,000
Davidson B. Penn	50	5,000
J. D. Bein & Son	50	5,000
Robert P. Smith	50	5,000
C. H. Slocomb	50	5,000
Jules Benit	40	4,000
Hypolite Gally	25	2,500
Total	10,000	$1,000,000

Thus done and passed at the city of New Orleans aforesaid, the day, month, and year first above written, in presence of
261 Marcel T. Ducros and Antoine Conand, witnesses of lawful age, expressly required and domiciliated in this city, who hereunto sign their names with said appearers and me, notary.

(The original signed) J. B. SLAWSON AND OTHERS.
M. T. DUCROS.
A. CONAND.
EDWARD BARNETT,
Notary Public.

I certify the foregoing to be a true copy of the original extant in my current register.

EDWARD BARNETT,
Notary Public.

New Orleans, 18th June, 1860.

The undersigned, recorder of mortgages in and for the parish of Orleans, certifies that the foregoing charter has been this day recorded in Society Book No. 4, folio 414.

CHAS. DARCANTEL,
Deputy Recorder.

New Orleans, 19th June, 1860.

262 *Proceedings of Stockholders' Meeting.*

OFFICE OF NEW ORLEANS CITY RAILROAD COMPANY,
No. 124 CANAL STREET,
NEW ORLEANS, *May 15th*, 1883.

The meeting of the stockholders of the New Orleans City Railroad Company, called, as provided in article 22 of the charter, by publi-

cation in two newspapers of this city, sixty days previous to this day, of the following advertisement:

"Office of New Orleans City Railroad Company, No. 102 Canal street (second floor), New Orleans, March 14, 1883.—To the stockholders of the New Orleans City Railroad Company: As the present charter of the company is about expiring and a new one is requisite, a general meeting of the stockholders is necessary to provide for the liquidation of its affairs, as provided in article 22 thereof. Said meeting will be held at the office of the company on Tuesday, May 15, 1883, at 12 m., at which every stockholder or his representative is expected to be present.

J. A. WALKER, *President.*

W. E. LEVERICH, *Secretary.*"

was called to order at 12 m. by the president, Mr. J. A. Walker. The following resolution was offered by John Stumpf and seconded by Mr. I. L. Lyons:

That whereas the board of directors of the company, under article 21 of the charter, accepted from the city of New Orleans certain franchises and privileges on the days below given and evidenced by the following resolutions, to wit:

1st. "October 10th, 1879.—Resolved, three-fourths of the board being present and concurring, That all and singular the acts of the president of the New Orleans City Railroad Company in the matter of the purchase of the right of way and franchises of the company, lately adjudicated to said company by the city of New Orleans, be, and the same are hereby, ratified and confirmed, and that the contract signed by the president in accordance with said adjudication be, and the same is hereby, adopted, concurred in, and ratified."

263 2nd. "January 10th, 1883.—Resolved, That the president be authorized to make a contract with the city for the extension of the Prytania-Street line in accordance with the ordinance passed by the council, and that the president and secretary be authorized to sign all papers accepting the same."

3rd. "May 2nd, 1883.—Resolved, That the franchise granted the company by the city council and known as the extension of the Magazine-Street line be accepted by the board, and that the president be authorized to sign all necessary papers accepting the same."

"Resolved, That the action of the board of directors of the New Orleans City Railroad Company in adopting the above resolutions be approved and confirmed, and that the franchises and privileges acquired thereby and by ordinances of the city council and by contracts made with the city be accepted by this meeting for the benefit of the New Orleans City Railroad Company, its successors and assigns."

And up to the hour of adjournment had received the affirmative votes of stockholders representing 7,696 shares of the capital stock of the company.

The following resolution was offered by Mr. I. L. Lyons and seconded by Mr. John Stumpf:

"That whereas the present charter of the company is about ex-

piring, and it being expedient that a new company having the same general objects be organized: Therefore be it

"Resolved, That the corporation known as the New Orleans City Railroad Company, organized by act before Edward Barnett, late notary public in this city, on June 15th, 1860, be, and the same is hereby, dissolved. Be it further

"Resolved, That, for the liquidation of the affairs of the company, Messrs. A. Baldwin, H. Gally, and Chas. E. Black are hereby appointed commissioners for that purpose. They shall at once enter upon their duties as such commissioners and shall continue in office until said liquidation is complete. Their compensation shall be one dollar each, and they shall have such powers as are usually exercised by liquidating commissioners of similar corporations, and specially are they hereby authorized to sell, assign, and transfer unto the New Orleans City and Lake Railroad Company, a
264 corporation to be this day organized, all the real estate, lines of railroads and their equipments, rights of way, franchises, and all other privileges which this company now has and enjoys by virtue of any and all contracts and agreements with the city of New Orleans or otherwise. In consideration of said sale said commissioners are to receive from said New Orleans City and Lake Railroad Company fourteen thousand shares of its capital stock and shall deliver same to the stockholders of this company in exchange (share for share) for their present certificates of stock, which shall be delivered to and cancelled by said commissioners."

And up to the hour of adjournment had received the affirmative vote of stockholders representing 7,696 shares of the capital stock of the company, and at 3 o'clock p. m., on motion of Mr. I. L. Lyons, seconded by Mr. Geo. H. Braughn, the meeting adjourned until Thursday, May 17th, 1883, at 12 o'clock m.

(Signed) J. A. WALKER, *President.*

NEW ORLEANS, *May 17th*, 1883.

The meeting of the stockholders of the New Orleans City Railroad Company, adjourned from May 15th, 1883, was called to order at 12 m. this day by the president, Mr. J. A. Walker, and the voting upon the two resolutions previously proposed was continued up to 4 o'clock p. m., at which time the votes of stockholders representing 1,738 additional shares were cast in favor of the adoption of both of the said resolutions. The votes cast this day with those cast May 15th, 1883, aggregated 9,434 votes, and this being more than two-thirds of the capital stock of the company the president declared the resolutions adopted. The original resolutions as voted upon, with the names and signatures of the stockholders or their representatives, with the number of shares voted by each, were, after the president had declared the result of the meeting, signed by him and the secretary and filed with the archives of the company, and upon motion of Mr. Jackson, seconded by Mr. Brousseau, the meeting of the stockholders of the New Orleans City Railroad Company adjourned *sine die.*

(Signed) J. A. WALKER, *President.*

265 *Sale and Transfer from New Orleans City Railroad Co. and New Orleans City and Lake Railroad Co.*

STATE OF LOUISIANA, }
Parish of Orleans. }

Be it known that on this ninth day of June, in the year one thousand eight hundred and eighty-three, before me, William Octave Hart, a notary public in and for this parish and State, duly commissioned and sworn, personally came and appeared Messrs. Albert Baldwin, Charles E. Black, and Hypolite Gally, all of this city, and herein appearing and acting as the liquidating commissioners of the New Orleans City Railroad Company, late a corporation of this city and State, organized by act before Edward Barnett, late a notary public in this city, on June 15th, 1860, said commissioners being appointed at a general meeting of the stockholders of said company held May 15th and 16th, 1883, as will more fully appear by reference to a duly certified copy of the resolution adopted at said meeting, made part hereof and hereto annexed.

And the said appearers severally declared that, by virtue of the power vested in them by said resolution, they do hereby grant, bargain, sell, assign, transfer, convey, abandon, set over, and deliver, with all legal warrantees and with substitution and subrogation to all rights and actions of warranty against former owners and possessors, unto "The New Orleans City and Lake Railroad Company," a legal corporation of this city and State, organized by act before the undersigned notary May 17th, 1883, and herein represented by Brownlee W. Taylor, Isaac L. Lyons, and Richard M. O'Brien, the com-
266 mittee named in article nine of its charter, as well as by its president, Joseph A. Walker, and its secretary, William E. Leverich, all here present, accepting, and purchasing for said company, its successors and assigns, and acknowledging due delivery and possession thereof, all and singular the property of said late New Orleans City Railroad Company, real and personal, movable and immovable, as hereinafter described.

Real estate.

1st. A certain square of ground, together with all the improvements thereon, rights, ways, privileges, and appurtenances thereto belonging or in anywise appertaining, situated in the second district of this city, and comprised within Canal, Custom-House, Dupre, and White streets, and designated by the number thirty on a plan drawn by L. Surgi, surveyor, dated 31st of December, 1849, and deposited in the office of O. H. Perry, late a notary in this city. Said square measures two hundred and eighty-three feet four inches seven lines on Canal street, a like measurement on Custom-House street, three hundred and thirteen feet four inches on Dupre street, and a like measurement on White street; which said property was purchased by the said New Orleans City Railroad Company by act

passed before Theodore O. Stark, late a notary in this city, July 20th, 1860, from W. A. Bell.

2nd. Eight lots of ground, adjoining each other, situated in the second district of this city, and designated by the numbers five, six, seven, eight, nine, ten, eleven, and twelve, in a portion of ground which is bounded on two sides by the old shell road of Bayou St. John and on a third side by Esplanade street, four of which lots—the numbers six, seven, ten, and eleven—are fronting on Esplanade street, and the four others—numbers five, eight, nine, and twelve—are fronting on said old shell road, which four first lots adjoin the four others in the rear; and the said eight lots, agreeably to a plan drawn by C. A. de Armas, dated 18th May, 1859, and deposited in the office of Jos. Cuvillier, notary, have the following dimensions, in American measure, to wit: Lot number five measures thirty-two feet one inch and four lines front on the old shell road of Bayou St.
John, two hundred and twenty-seven feet ten inches and five
267 lines in depth on the line dividing it from lot number four, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot number eight, and thirty-two feet five inches and a half line on the rear line.

Lot number eight measures thirty-two feet one inch and four lines front on the old shell road of Bayou St. John, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot number five, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number nine, and thirty-two feet five inches and one-half line on the rear line.

Lot number nine measures thirty-two feet one inch and four lines front on said old shell road, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number eight, two hundred and thirty feet one line on the line dividing it from lot number twelve, and thirty-two feet five inches and one-half line on the rear line.

Lot number twelve measures thirty-two feet one inch and five lines front on the line dividing it from lot number nine and two hundred and thirty feet eight inches and five lines on the line dividing it from the property lately belonging to the late A. Vignes and thirty-two feet five inches and one line and a half on the rear line.

Lot number eleven measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet eight inches and six lines in depth on the line dividing it from lot number thirteen, two hundred and thirty feet one line in depth on the line dividing it from lot number ten, and thirty-two feet five inches and one line and a half on the rear line.

Lot number ten measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet one line in depth on the line dividing it from lot number eleven, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number seven, and thirty-two feet five inches and one-half line on the rear line.

Lot number seven measures thirty-two feet seven inches and two

lines front on Esplanade street by two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot number ten, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot number six, and thirty-two feet five inches and one-half line on the rear line.

268 And lot number six measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and twenty-eight feet seven inches and one line in depth on the line dividing it from lot number seven and two hundred and twenty-seven feet ten inches and five lines in depth on the line dividing it from lot number three and thirty-two feet five inches and a half line on the rear line.

Which said property was purchased by the said New Orleans City Railroad Company from the Church of St. Louis of New Orleans by an act passed before said notary, Cuvillier, on November 22d, 1860.

3rd. A certain lot or parcel of ground of irregular dimensions, together with all the buildings and improvements thereon, situate in the square bounded by Nayades or St. Charles, Pleasant, Toledano, and Prytania streets, in the fourth district of this city, and measuring six feet front on said Nayades or St. Charles street, two hundred and eighty-six feet seven inches front on said Pleasant street, two hundred and eighty-seven feet six inches front on said Toledano street, and twenty-six feet on the rear line.

Which said property was purchased by the said New Orleans City Railroad Company from E. J. Hart by an act passed before William L. Poole, notary, on March 8th, 1861.

4th. "A." Seven lots of ground situated in the square number fourteen, which is bounded by Pleasant, Harmony, Camp, and Magazine streets, designated by the numbers one, two, three, four, five, six, and seven on a plan drawn by C. A. Hedin, surveyor, on the 27th November, 1849, and deposited as plan No. 180 in the office of Theodore Guyol, notary public, in this city. Lots numbers one, two, three, and four adjoin each other and measure each thirty feet front on Magazine street by one hundred and fifteen feet in depth between parallel lines, lot number four forming the corner of Magazine and Pleasant streets, and lots numbers five, six, and seven adjoin each other, and measure each thirty feet in front on said Pleasant street by one hundred and twenty feet in depth between parallel lines.

"B." A certain lot of ground situated in the said square number fourteen, designated by the letter A on a sketch dated the 23rd of June, 1852, and annexed to an act passed before L. R. Kenny,

269 then notary in this city, on the 25th of June, 1852. Said lot measures thirty feet front on Pleasant street between Magazine and Camp streets by a depth of one hundred and twenty feet between parallel lines, American measure, and is composed of the rear part of lots numbers eight, nine, ten, and eleven of said square according to the above-mentioned plan of C. A. Hedin.

"C." Four certain lots of ground situated in the said square number fourteen, designated by the letters "B, C, D, and E" on a sketch paraphed "*ne varietur*" and annexed to an act passed before J. F.

Coffey, notary, on the 24th day of March, 1859. Said lots adjoin each other and measure each thirty feet front on Camp street by a depth of eighty-five feet between parallel lines, said lot "B", forming the corner of Camp and Pleasant streets; which said four lots of ground form the greater parts of lots designated by the numbers eight, nine, ten, and eleven on the said above-mentioned plan by C. A. Hedin.

"D." Five certain lots of ground situated in the said fourth district, in the square number thirteen, comprised within Pleasant, Magazine, Camp, and Toledano streets, designated by the numbers seven, eight, nine, ten, and eleven on a plan drawn by C. A. Hedin, dated the 21st day of February, 1849, and deposited in the office of L. R. Kenny, then notary, and measuring as follows, to wit: Lot number seven measures twenty-nine feet one inch and one-eleventh in front on Pleasant street by a depth of one hundred and nineteen feet four inches four and one-fourth lines on the line nearest to Magazine street and by a depth of one hundred and seventeen feet five inches and one line and five-elevenths on the line of lot number six.

Lots numbers eight, nine, ten, and eleven adjoin each other and measure each thirty-one feet nine inches and four lines front on Magazine street by the following depths, to wit: Lots numbers eight, nine, and ten, each one hundred and sixteen feet four inches and four-elevenths between parallel lines, and lot number eleven, one hundred and sixteen feet four inches and four-elevenths on the line of lot number ten and one hundred and seventeen feet two
270 inches seven and three-fourths lines on the line of Suburb Plaisance, now Toledano street, the whole American measure.

"E." Three lots of ground situated in the said square number thirteen, designated by the numbers four, five, and six on said above-mentioned plan drawn by C. A. Hedin on the 21st February, 1849, adjoining each other and measuring each twenty-nine feet one inch and one-eleventh front on said Pleasant street, twenty-nine feet three inches and five lines and nine-elevenths in width in the rear by the following depths, to wit:

Lot number six, one hundred and fifteen feet five inches six lines and six-elevenths.

Lot number five, one hundred and thirteen feet six inches three lines and seven-elevenths, and lot number four, one hundred and eleven feet seven inches and eight-elevenths.

"F." Three certain lots of ground situated in the said square number thirteen, designated by the numbers one, two, and three on said above-mentioned plan drawn by C. A. Hedin on the 21st February, 1849, and measuring as follows, to wit: Lot number one, forming the corner of Camp and Pleasant streets, measures twenty-nine feet one inch and one-eleventh in front on Pleasant street, one hundred and five feet nine inches deep and front on Camp street, one hundred and eight feet seven inches and ten-elevenths in depth on the line of lot number two, and twenty-nine feet three inches and five lines and nine-tenths in width in the rear.

Lot number two measures twenty-nine feet one inch and one-eleventh front on Pleasant street, one hundred and seven feet eight inches and ten-elevenths deep on the line of lot number one, one

hundred and nine feet seven inches and nine-elevenths deep on the line of lot number three, and twenty-nine feet three inches and five lines and nine-elevenths in width in the rear, and lot number three measures twenty-nine feet one inch and one-eleventh front on Pleasant street, one hundred and nine feet seven inches and nine-elevenths in depth on the line of lot number two, one hundred and eleven feet seven inches and eight lines on the line of lot number
271 four, and twenty-nine feet three inches and five and nine-elevenths lines in width in the rear, American measure, together with all the buildings and improvements thereon, rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said New Orleans City Railroad Company from Henry Hart and Frederick Wintz by an act passed before Edward Barnett, late notary in this city, on the 20th March, 1861.

5th. A certain lot of ground situated in the fourth district of this city, designated by lot number one of square bounded by Toledano, Pleasant, Nayades (now St. Charles), and Prytania streets, and measuring thirty-two feet eight inches, more or less, in front on Prytania street by one hundred and fifty feet deep and front on Pleasant street, and about twenty-six feet on the rear line dividing it from lot number two, as per plan drawn by Adl. Knell, architect and civil engineer, dated the 11th October, 1851, and deposited in the office of Ant. Doriocourt, notary in this city, a sketch of which said plan is thereunto annexed for reference to the act of purchase.

Which said property was purchased by the said New Orleans City Railroad Company from Joseph Llado by an act passed before Edward Barnett, late notary in this city, on March 20th, 1861.

6th. A certain square of ground situate, lying, and being in the third district of this city, bounded by Goodchildren, Love, Poland, and Lesseps streets, and having, English measure, two hundred and seventy-seven feet eight inches in front on Goodchildren street, the same front on Love street, three hundred and ninety-six feet three inches in front on Lesseps street, and the same front on Poland street, as per plan of Faubourg Washington, drawn by Joseph Pilié, city surveyor, under date of the 25th of February, 1832, deposited in the office of Charles Janin, late notary public in this city, on the fifth of March following, together with all the rights, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said New Orleans City Railroad Company from Chas. A. Barriere and Wm. S.
272 Toole by an act passed before Edward Barnett, late notary in this city, on March 30th, 1861.

7th. Four lots of ground adjoining each other, situate in the second district of this city, designated by the numbers one, two, three, and four, in a portion of ground bounded on both sides by the Bayou St. John and on a third side by Esplanade street, which lots of ground measure in American measure as follows, to wit: Lot number one, thirty-two feet one inch five lines front on the old shell road by two hundred and twenty-six feet five inches five lines in depth on

the line dividing it from Mr. Musgrove's property; lot number four, thirty-two feet one inch four lines front on the old shell road by a depth of two hundred and twenty-seven feet two inches one line on the line dividing it from lot number one, and two hundred and twenty-seven feet ten inches five lines in depth on the line dividing it from lot number five; lots numbers two and three measure each thirty-two feet seven inches two lines front on Esplanade street by a depth as follows: Lot number two, of two hundred and twenty-six feet five inches and six lines on the line dividing it from Mr. Musgrove's property; lot number three, two hundred and twenty-seven feet two inches and one line on the line dividing it from lot number two, and two hundred and twenty-seven feet ten inches and five lines on the line dividing it from lot number six. Said lots numbers one, two, three, and four are contiguous to each other on their rear lines—

Agreeably to a plan drawn by Chas. A. de Armas, dated 18th May, 1859, and deposited in the office of J. Cuvillier, notary, for reference, together with all the buildings and improvements thereon and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said property was purchased by the said New Orleans City Railroad Company from Henry Willett by an act passed before Edward Barnett, late notary in this city, on 22d September, 1854.

8th. A certain square of ground, with the improvements thereon, situate in the second district of this city and designated by the number thirty-one on a plan drawn by L. Surgi, surveyor, on the 31st December, 1849, and deposited in the office of O. H. Perry, late a notary public in this city.

273 Which said square is bounded by Dupré, White, Custom-House, and Bienville streets, and is subdivided into twenty-two lots.

Which said property was purchased by the said New Orleans City Railroad Company from German Society of New Orleans by an act passed before Theo. Guyol, notary, on June 13th, 1877.

9th. That portion of ground situate on the shore of Lake Pontchartrain, on the left side of the new canal, going to said lake, and in front of lots numbers ten, eleven, twelve, thirteen, fourteen, and fifteen, on a plan drawn by W. H. Williams, surveyor and engineer, on the twentieth day of April, eighteen hundred and seventy-one, and deposited in the office of Theo. Guyol, notary in this city, as plan I, the said portion of ground commencing from the line of division between lots numbers eight and nine of said plan—that is to say, at a distance of one hundred feet from the corner of Mercer street, thence extending along Lake avenue about nine hundred and ten feet to the division line between the property of the New Orleans Canal and Banking Company and that of Hazeur Brothers by a depth running to the lake, together with all the rights of accretion in front of said portion of ground and all the rights, claims, and privileges to which the said New Orleans Canal and Banking Company was entitled as front proprietors.

Which said property was purchased by the said New Orleans City

Railroad Company by act before Theo. Guyol, March 9th, 1881, from said banking company.

Right of way and franchises.

1st. The right of way and franchise for the privilege of running street cars on what are known as the "Camp and Prytania line," the "Magazine line," the "Rampart and Dauphine line," the "Canal Street and Metairie Road line," the "Metairie Ridge and Bayou St. John line," and the "Esplanade and Bayou Bridge line," purchased from the city of New Orleans October 2nd, 1879, by act before G. Legardeur, Jr., notary public in this city, passed in accordance with ordinances Nos. 4968, 5020, and 6148, A. S., and omission supplied by ordinance 7127, A. S., adopted May 31st, 1881.

2d. The right of way and franchise for the privilege of running street cars on what is known as the extension of the
274 "Camp and Prytania line," as per contract with the city of New Orleans, passed before Joseph D. Taylor, notary public in this city, on February 27th, 1883, passed in accordance with ordinance No. 54, council series.

3d. The right of way and franchise for the privilege of running street cars on what is known as the extension of the "Magazine line," as per contract with the city of New Orleans, passed before Joseph D. Taylor, notary public in this city, on May 15th, 1883, passed in accordance with ordinances Nos. 248 and 276, council series.

4th. The right of way and franchise for the privilege of running street cars on what is known as the "Levee and Barracks line," purchased from the city of New Orleans June 9th, 1862, by act before C. E. Fortier, late notary in this city, passed in accordance with ordinances Nos. 6033 and 6053, old series, amended by ordinances Nos. 6322 and 6405, old series, and 490 and 1506, new series. (Note.—Under these ordinances this right of way exists until June 8th, 1897.)

5th. The right of way and franchise for the privilege of running street cars on what is known as the "Slaughter-House Extension" from Delery street, over the Levee road or street, to the Crescent City Live Stock Landing and Slaughter-House Company's premises, granted by ordinance No. 1682, A. S., adopted July 30th, 1872.

6th. The right of the exclusive use of the lake front of the revetment levee, situated between the end of the new canal and the bridge of the Upper Line canal, for the period of twenty-five years from January 27th, 1880, as per ordinance No. 6316, A. S., adopted that day.

7th. The right of use and occupancy of the buildings and other improvements erected on said lake front and which revert to the city of New Orleans at the expiration of said twenty-five years, consisting of wharf, hotel, bar-room, pavilion, music stand, machine shop, depot, etc.

8th. The right and privilege of running trains propelled by steam power from the lake to the stand now established on Canal and Carondelet streets, derived from ordinances of the city of New Orleans No. 3565, adopted June 13th, 1876, and No. 3617, adopted August

22nd, 1876; No. 6528, adopted June 15th, 1880, and No. 6891, adopted March 3rd, 1881.

275 (NOTE.—These last three ordinances are to be construed together, and, as the right to run said steam trains on Canal street between Basin and Carondelet streets is now in contest, the transfer of this right is made without warranty. See F. W. Tilton *et als. vs.* New Orleans City Railroad Company, No. 8613, supreme Court of Louisiana.)

Also from contract with the city, passed before G. LeGardeur, notary, on July 1st, 1878, and from act of consolidation with the New Orleans, Metairie and Lake Railroad Company, of date December 21st, 1875, and January 12th, 1876, deposited with the secretary of state January 24th, 1876, said New Orleans, Metairie and Lake Railroad Company being incorporated by act of the Legislature No. 133, approved April 20th, 1869.

Rolling stock, live stock, etc.

1st. Six hundred and forty-five mules.
2nd. Twenty-seven ponies.
3rd. One hundred and forty-eight cars.
4th. Nine engines.
5th. Forty coaches.
6th. Seven floats, twelve carts, one dray, two baggage cars, three wagons, and two flat cars.
7th. Feed and harness.
8th. Contents of blacksmith, harness, and machine shops at Magazine, Canal, Bayou Road, and Poland stations.
9th. Machinery for electric light at West End.
10th. Furniture at West End Hotel, and office furniture, iron safes, stationery, etc., at 102 Canal street, second floor.

Road-bed.

Tracks aggregating about fifty miles, including cross-ties, stringers, tie-rods, rails, etc., running on the following streets:

1st. "Magazine line."—Double track on Canal street from Exchange Place to Camp street, and on Magazine street from Toledano street to St. Andrew street; single track on Camp and Magazine streets from Canal street to St. Andrew street, and on Canal street from Magazine street to Camp street.

2nd. "Prytania line."—Double track on Prytania street from its junction with Camp street to Upper Line street, on Upper
275 Line street from Prytania street to Pitt street, on Pitt street from Soniat street to Upper Line street, on Dufossat street from St. Charles street to Boudousquie street; single track on Pitt and Boudousquie from Soniat to Dufossat, and on Soniat and Dufossat from Boudousquie to Pitt street.

3rd. "Rampart and Dauphine line."—Double track on Rampart street from Canal street to Esplanade street, on Poland street from Dauphine street to Rampart street, on Dauphine street from Poland street to Delery street, on Levee from Delery street to slaughter-

house; and single track on Dauphine street from Esplanade street to Poland street, and on Rampart street between same streets.

4th. "Canal street and Metairie Road line."—Double track on Canal street from St. Charles street to Metairie road.

5th. "Metairie Road and Bayou St. John line."—Double track on Metairie ridge from new canal to Carondelet canal or Bayou St. John.

6th. "Esplanade and Bayou Bridge line."—Double track on Esplanade street from Rampart street to Bayou St. John.

7th. "Esplanade and French Market line."—Double track on Esplanade street from Levee street to Victory street, and from Bourbon street to Rampart street.

8th. "Levee and Barracks line."—Double track on Canal street from Decatur street to North Peters street, on North Peters street from Canal street to Enghein street, Enghein street from North Peters to Charters street, Poland street from Dauphine street to Royal street; single track on Charters street from Enghein street to Poland street, on Poland and Enghein streets from Royal to Charters street, Royal street from Poland street to Enghein street.

9th. "West End line."—Double track along the new canal from end of Canal-Street line to lake.

10th. And all the switches, turnouts, turn-tables, connections, extra track, etc., used or belonging to any of the above lines.

This sale and transfer is made and accepted for and in consideration of the price and sum of one million four hundred thousand dollars, represented by fourteen thousand shares of the capital stock of the New Orleans City and Lake Railroad Company, of the par value of one hundred dollars each, which have been delivered to the liquidating commissioners of the New Orleans City Railroad Company, who, in the name of the stockholders thereof, grant full acquittance and discharge therefor to the present purchaser.

277

And in accordance with articles IV and V of its charter and as a further consideration of the sale herein made the said New Orleans City and Lake Railroad Company hereby assumes all the obligations and contracts of the said New Orleans City Railroad Company, whether the same relate to individuals, other private corporations, the city of New Orleans, or the State of Louisiana, and it binds itself, its successors and assigns, to fully discharge and execute same.

And it further obligates itself to pay and liquidate all the bonded, judgment, and floating debt of said New Orleans City Railroad Company as hereinafter set forth:

1st. "Bonded debt," amounting to seven hundred thousand dollars, fully set forth and described in an act of mortgage dated December 1st, 1879, granted by said company to Joseph A. Walker before N. B. Trist, notary public in this city, and recorded in the mortgage office of this parish, in Book 176, folio 611; and said purchaser hereby binds itself, its successors and assigns, not to alienate nor encumber the property herein conveyed to the prejudice of said mortgage, which, as well as the contract amendatory thereof, passed before same notary on March 11th, 1880, is hereby expressly as-

sumed, and in this connection said commissioners hereby transfer to said purchaser the deposit in the Canal Bank of this city to the credit of said bonded debt, made in accordance with said contract, now amounting to the sum of twenty thousand two hundred and seventy-four dollars and eighty cents, and they also transfer all other cash of said New Orleans City Railroad Company, whether in bank or on hand, the receipt of which is hereby acknowledged by the representatives of the purchaser and a statement of the amount thereof dispensed with.

2nd. "Judgment debt." — "A." City of New Orleans *vs.* New Orleans City Railroad Company, No. 1247, division "C" of the civil district court for the parish of Orleans. Judgment for $11,239.20, with ten per cent. per annum interest from March 31st, 1881, and costs, being for city taxes for 1881 on the franchises of the company, assessed at $630,000.

278 "B." William Mattle *vs.* New Orleans City Railroad Company *et al.*, No. 4596 of same court. Judgment for $1,000, with legal interest from December 1st, 1881, and costs, being for damages claimed for expulsion from car, now pending on appeal in supreme court of Louisiana.

"C." Caroline M. Schiller *vs.* New Orleans City Railroad Company, No. 5877 of same court. Judgment for $2,691.16, with legal interest from April 27th, 1882, and costs, being for value of stock unlawfully transferred; has been appealed, and propositions of compromise now pending.

"D." Ophelia E. Schiller, wife of W. H. Rolling, *vs.* New Orleans City Railroad Company, No. 5874 of same court. Judgment for $1,269.33⅓, with nine per cent. back dividends and costs; similar to claim above. Propositions of compromise pending; possibility of appeal by plaintiff.

"E." Mary E. Schiller, wife of O. A. Fairex, *vs.* New Orleans City Railroad Company, No. 8144 of same court; same judgment as above and in same condition.

3rd. "Floating debt."—"A." Claim of city of New Orleans for taxes of 1882 on the franchises of the company, assessed at $630,000, amounting to twenty thousand and three dollars, with ten per cent. per annum interest from March 31st, 1882, till paid, and costs, as per suit No. 3548, division "B" of the civil district court for the parish of Orleans.

"B." Claim of Charles E. B. de La Brettonne and wife for twenty-five thousand dollars, resulting from injury to and death of minor child, as per suit No. 6842, division "B," civil district court for the parish of Orleans.

"C." Claim of Mrs. Mary Parish for ten thousand dollars, resulting from alleged injuries caused by premature starting of car, as per suit No. 8091, division "D," civil district court for the parish of Orleans.

"D." Claim of Crescent City Railroad Company for twenty-five thousand dollars damages, alleged to have been caused by the illegal issuance of an injunction, as per suit No. 8421, division "E," civil district court for the parish of Orleans.

(NOTE.—The above suits are now pending and undetermined, and in all of them the New Orleans City Railroad Company, through its attorneys, filed proper defenses, and no liability is admitted
279 to exist as to any of them, either by the present vendor or the present purchaser, it being the true meaning and intent of this assumption that the New Orleans City and Lake Railroad Company binds itself in no other manner than to satisfy whatever final judgments may be rendered in said suits against it by reason of its hereby becoming defendant therein.)

"E." And whatever "floating debt proper" said New Orleans City Railroad Company may have the present purchaser assumes and dispenses with a detailed statement thereof.

The said purchaser moreover binds itself to carry out all valid existing contracts for the employment or hire of all clerks and other agents, including the musicians engaged for the season at "West End," among whom is embraced Liberati, the cornetist.

The present purchaser is hereby subrogated to all the rights of said New Orleans City Rai road Company existing under any and all contracts heretofore made not herein specially mentioned (should any such be omitted therefrom), and particularly as to the following two:

1st. Contract and agreement with the St. Charles Street Railroad Company for the use of its tracks and road-bed on Esplanade street between Bourbon and Victory streets, in this city, as per act before W. J. Castell, notary in this city, May 23rd, 1874.

2nd. Contract and agreement with the Firemen's Charitable Association for a twenty-five years' lease from January 1st, 1876, of that portion of Greenwood cemetery through which the West End trains now run and fully described in the act of lease of same, passed before Wm. B. Kleinpeter, late notary in this city, February 8th, 1876.

All the obligations of the above acts are assumed by the present purchaser.

By reference to the annexed certificate of the register of conveyances in and for this parish and city, dated this day, it will appear that the real estate herein sold has not been previously alienated.

280 And by reference to the annexed certificate of the recorder of mortgages in and for this parish and city, dated May 28th, 1883, said real estate appears free of all encumbrances except inscriptions of the drainage privilege and the aforesaid mortgage of $700,000.

The purchaser assumes payment of any drainage tax that may be legally due and unpaid.

Proper tax receipts have been produced unto me, notary, showing the payment of all taxes due the State of Louisiana and the city of New Orleans except those claimed by the latter for 1881 and 1882 on the assessed value of the franchises of the New Orleans City Railroad Company, which, subject to the qualifications above set forth, are assumed by the present purchaser, as are also all taxes exigible the current year and based upon the assessments made against the

property herein sold as belonging to the New Orleans City Railroad Company.

And said New Orleans City Railroad Company, having, according to law, paid its State and city licenses for 1883, amounting to twenty-five hundred dollars each, hereby transfers the unexpired term thereof, extending to December 31st, 1883, to the present purchaser, the New Orleans City and Lake Railroad Company.

Thus done and passed in the presence of Joseph A. Dare and William S. Ingram, competent witnesses, both of this city, who hereto sign with said parties and me, the notary.

(Original signed)

ALBERT BALDWIN.
H. GALLY.
CHAS. E. BLACK.
I. L. LYONS.
B. W. TAYLOR.
R. M. O'BRIEN.
J. A. WALKER.
W. E. LEVERICH.
JOS. A. DARE.
W. S. INGRAM.
W. O. HART,
Notary Public.

I hereby certify the above and foregoing to be a true and correct copy of the original act on file and of record in my office.

W. O. HART,
Notary Public.

281 *Sale of the Right of Way and Franchises by the City of New Orleans to the New Orleans City Railroad Company.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this second day of the month of October, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the 104th—

Before me, Gustave Le Gardeur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared the Honorable Isaac W. Patton, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents, under and by virtue of resolution 6148, administration series, adopted by the council of the city of New Orleans on this 2d day of October, 1879, a certified copy whereof is hereto annexed for reference.

And also came and appeared Frederick Wintz, of this city, president of the New Orleans City Railroad Company, and duly authorized as such in the full execution of these presents, under and by virtue of the resolution adopted by the board of directors of the said

company at their sitting of the 1st and 22d days of September, 1879, a certified copy whereof is hereto annexed for reference.

282 And the said Mayor Patton, in his said capacity, declared that on the 25th day of March, 1879, the council of the city of New Orleans adopted the following resolution, to wit:

No. 4968, administration series.

"Whereas the franchises granted by the city of New Orleans to the New Orleans City Railroad Company for running certain lines of railroads will expire in 1880; and

"Whereas it is necessary to give ample time to all parties who may desire to make bids or proposals for said franchises at the expiration of the time for which said franchises were granted by the city: Therefore be it

"Resolved, That the administrator of commerce be, and is hereby, authorized to advertise until the first day of July, 1879, in the official journal of the city, and also in one journal in the cities of New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the franchises of the following-mentioned roads for a period of twenty-five years from the respective dates of the expiration of said franchises granted by the city of New Orleans to the New Orleans City Railroad Company, to wit: 1. The Magazine, Camp, Prytania, Rampart, and Dauphine lines, which expire on the 3d day of February, 1880. 2. The Canal Street and Metairie Road line, which expires on the 2d day of July, 1880. 3d. The Esplanade-Street line, which expires on the 2d day of July, 1880.

"That the terms of said sale shall be set forth in specifications, to be drawn up by the administrator of commerce, with the approval of the council, and to be put on file in the office of the administrator of commerce as soon as practicable."

That on the 22d day of April, 1879, the council of the city of New Orleans adopted the following resolution, to wit:

No. 5020, administration series.

"Resolved, That ordinance No. 4969, administration series, be amended to read as follows:

"That the administrator of commerce be, and is hereby, authorized to advertise until the first day of September, 1879, in the official journal of this city, and also in one journal in the cities of

283 New York, Philadelphia, Boston, Chicago, and St. Louis, for sealed proposals for the sale of the franchises of the railroad lines named therein from the respective dates of the expiration of said franchises granted by the city of New Orleans up to the first day of January, 1906."

That in accordance with the provisions of said resolution No. 4968, administration series, as amended by the said resolution No. 5020, administration series, the Honorable J. Henry Behan, administrator of commerce of the city of New Orleans, has published or caused to be published the following advertisement, to wit:

Sale of the Franchises of the New Orleans City Railroad Company.

DEPARTMENT OF COMMERCE, ROOM NO. 13, CITY HALL,
NEW ORLEANS, *May 19th*, 1879.

"Sealed proposals will be received at the office of the administrator of commerce, room No. 13, city hall, New Orleans, until 12 m., on the first day of September, 1879, for the right of way on the following railroads, to wit:

"SECTION 1. Camp and Prytania and Camp and Magazine Streets lines, which expire on the third day of February, 1880.

"SECTION 2. Rampart and Dauphine, Canal street and Metarie ridge to Bayou St. John, and Esplanade and Bayou Bridge lines, which expire on the second day of July, 1880.

"The right of way to the purchasers of said franchises shall expire on the first day of January, 1906, and at the expiration of said time the said railroad cars, fixtures, and their appurtenances shall revert to the city on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser or purchasers and the other by the city, and in the event of a disagreement as to said valuation between said persons thus appointed a third party or umpire shall be appointed by one of the district courts on the joint application of the parties, the decision thereby had to final.

"That the city shall bind herself to transfer to the purchasers of each line of road, as per sections 1 and 2, the right of reversion, which the city now has, to purchase all the property of each line at an appraised value.

284 "That said franchises shall be sold for cash, the entire price to be paid by the purchaser or purchasers of the franchise or franchises at the time of the delivery of the said franchise or franchises.

"The delivery is made by the signing and delivery of the act of transfer and by placing the purchaser in actual possession.

"That the purchasers of said franchises shall keep in repair the streets and bridges through which the lines of road pass, from curb to curb, under the directions of the administrator of improvements and the city surveyor.

"That the fares to be charged by said purchasers on their roads shall never exceed the amounts now charged except as provided in the specifications herein referred to.

"Each bid shall be accompanied by a deposit or certified check of $50,000 as an evidence of their intention to abide by the adjudication, which amount shall be forfeited in case of failure to sign the contract, and the same shall be held as a special deposit until the final delivery of said road and appurtenances.

"Bidders to whom the contract is not awarded shall have their deposits returned to them on the day adjudication is made. Bidders can bid for either franchise, say for sections one and two, or both, at their option.

"Pamphlets containing specifications of contract can be obtained on application to the administrator of commerce.

"Proposals must be endorsed 'Bids for the franchises of the New Orleans City railroad.'

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until the purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf the city; and until such deposit and payment of the price shall have been made and accepted by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAN,
"*Administrator of Commerce.*"

285 That in accordance with the foregoing advertisement sealed proposals for the franchises of the New Orleans City railroad were received up to 12 m. on Monday, the first day of September, 1879, at the office of the said administrator of commerce.

That on the same day, to wit, on the first day of September, 1879, the mayor and administrators met in committee of the whole in the mayor's parlor; that there and then the said sealed proposals were opened, and the proposal of the said New Orleans City Railroad Company for the sum of six hundred and thirty thousand dollars ($630,000) was found to be the highest.

That at the session of the city council on this Thursday, the second day of October, 1879, the bid or the proposal of the said New Orleans City Railroad Company for six hundred and thirty thousand dollars for the franchises of the New Orleans City railroad was accepted by the city council, and the mayor instructed to enter into and sign the necessary contract with the said New Orleans City Railroad Company, as fully appears by the said resolution, No. 6148, administration series, adopted by the council of the city of New Orleans on this second day of October, 1879, a certified copy whereof is hereto annexed for reference as aforesaid.

Now, therefore, the said mayor, Isaac W. Patton, declared that, in consideration of the foregoing and by virtue of the power in him vested by the said resolution, No. 6148, administration series, he does by these presents in his said capacity and for and on behalf of the city of New Orleans grant, bargain, sell, convey, transfer, assign, and set over unto the said New Orleans City Railroad Company, the said Frederick Wintz, as president aforesaid, accepting and purchasing for and in the name of the said New Orleans City Railroad Company and acknowledging due delivery and possession of all the property, cars, fixtures, and other appurtenances thereunto belonging or in anywise appertaining—

The right of way and franchises on the following railroads, to wit:

SECTION 1. Camp and Prytania and Camp and Magazine Street lines, for the full term and period commencing on and
286 to be computed from the third day of February, 1880, and to end on the first day of January, 1906.

SEC. 2. Rampart and Dauphine, Canal street and Metairie Ridge to Bayou St. John, and Esplanade and Bayou Bridge lines, for the full term and period commencing on and to be computed from the second day of July, 1880, and to end on the first day of January, 1906:

To have and to hold the said right of way and franchises of the said railroad lines and the right of reversion of the city to purchase all the property of each line unto the said New Orleans City Railroad Company, its successors and assigns, transferees and vendees, for the full term and period hereinabove fixed and determined by these presents.

This sale is made and accepted in accordance with the specifications on file in the office of the administrator of commerce, which said specifications are in the words and figures following, to wit:

Specifications concerning the sale of the right of way and franchises for a term of years expiring on the first day of January, 1906, as per ordinances Nos. 4968 and 5030, administration series, hereunto annexed, of the following street railroads of the New Orleans City Railroad Company, to wit:

"Camp and Prytania, Camp and Magazine, Rampart and Dauphine, Canal street and Metairie Road to Bayou St. John, and Esplanade and Bayou Bridge lines."

"Section first.

"Camp and Prytania Streets line, Camp and Magazine Streets line."

"Section second.

"Rampart and Dauphine, Canal street and Metairie Road to Bayou St. John Esplanade, and Bayou Bridge. The Camp and Prytania, Camp and Magazine, and Rampart and Dauphine Streets lines expire on the third day of February, 1880. (See ordinance No. 4945, attached.)

"The Canal street and Metairie Road and the Esplanade and Bayou Bridge lines expire on the second day of July, 1880. (See ordinance No. 5244, attached.)

"The above-mentioned roads run on the following streets:

287 "First section.

"Comprises the following roads passing through the streets hereinafter named, with tracks, turnouts, and turn-tables, viz:

"The Camp and Prytania and Camp and Magazine lines.

"Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track on Magazine from Canal street to St. Andrew street; double track on Magazine from St. Andrew to Toledano street; double track on Prytania from Poeyfarre to Toledano street; single track on Camp street from Poeyfarre to Canal street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania street.

"Second section.

"Comprises the following roads passing through the streets hereinafter named, with the tracks, turnouts, and turn-tables:

"Rampart and Dauphine Streets lines.

"Double track on Rampart street from Canal street to Esplanade street; a single track on Dauphine street from Esplanade to Poland street; a single track on Rampart street from Esplanade to Poland street; a double track on Poland street from Dauphine to Rampart street; a double track on Dauphine street from Poland street to Caffin's lane; a single track on Dauphine street from Caffin's lane to Delery street, with the right of a double track.

"Canal street and Metairie road to Bayou St. John.

"A double track on Canal street from Carondelet street to Metairie road, along Metairie road to new canal; four tracks on Canal street from St. Charles to Carondelet street; double track on Metairie ridge from new canal to Carondelet canal or Bayou St. John.

"Esplanade and Bayou Bridge lines.

"Double track on Esplanade street from Rampart street to Bayou St. John; double track on Esplanade street from Levee to
288 Rampart street. (See ordinance No. 2518 attached.) All these rights revert to the city at the expiration of the twenty years, to wit, the third day of February and the second day of July, 1880."

"'Ordinance No. 4945, old series.

"'Resolved, That the adjudication made by the controller on the twentieth day of January, 1860, of the right of way to establish railroads in the city of New Orleans, under and by virtue of resolutions Nos. 4364, 4474, 4735, and 4766, to J. B. Slawson—securities, Henry Hart, F. Wintz, and P. Irwin—for and in consideration of $130,000 bonus offered by him, be, and the same is hereby, approved, the securities accepted, and the mayor authorized to sign the necessary act or acts with the said parties.'

"'Ordinance No. 5244, old series.

"'Resolved, That the following adjudications made by the controller on the second of June, 1860, be, and the same are hereby, approved, and the securities accepted, viz:

"'First. Under resolution No. 5122, the right of way for a railroad on Canal street from Rampart street to the Metairie ridge, to J. B. Slawson & Co.; security, Henry Hart, P. Irwin, and Frederick Wintz, for $500 bonus.

"'Second. Under resolution No. 5119, the right of way for railroad on Esplanade street from Rampart street to Bayou St. John, to J. B. Slawson & Co.; security, Henry Hart, Patrick Irwin, and Frederick Wintz, for $500 bonus.

"'Resolved further, That the mayor be, and he is hereby, author-

ized to sign the necessary act or acts with the said parties for the performance of the work.'

"'Ordinance No. 2518, administration series.

"'An ordinance granting to the City Railroad Company the right of way for a railroad on Esplanade street to connect the Esplanade and Bayou line of the New Orleans City Railroad Company with the Levee line, and other purposes.

"'Be it ordained by the city council, That for and in consideration of the sum of one thousand dollars in United States currency, to be immediately paid into the city treasury, there be, and is
289 hereby, granted to the New Orleans City Railroad Company the right of way and privilege of constructing and laying a double-track railroad on Esplanade street, to extend from the junction of Rampart to Peters or Levee street, for the purpose of connecting the Esplanade and Bayou line with the Levee line of said company; the tracks, cars, equipments, management, and regulations to conform to and be identical with the roads to be connected. Said grant of right of way shall continue during the continuance of the charter of the New Orleans City Railroad Company and shall terminate therewith. The track shall be laid in accordance with the specifications to be furnished by the city surveyor.'

"The purchaser or purchasers shall be bound to keep the paved or unpaved streets through which said tracks pass, as well as all the bridges on said streets, in good repair and condition from curb to curb during the continuance of their privilege and right of way.

"They shall, on proper notification from the administrator of improvements and the city surveyor, raise, repair, and repave any or all intersections of streets when required, upon lines and levels to be furnished by the city surveyor.

"They shall be required to widen and deepen any or all culverts and sluices to such dimensions as may be required and directed by the city surveyor. They shall be required to keep all bridges in repair and make new ones when required by the administrator of improvements and the city surveyor on all the streets through which their lines pass.

"The lines of said tracks within the rails shall be paved with round stone, except where square-stone pavements exist or may hereafter be made, in which case the same material shall be used for paving within rails. When the paving of the streets, where the same are paved, as well as the shelling of the streets, where the same are shelled, shall be taken up for the purpose of repair they shall be replaced in the same condition as formerly and the streets graded to a proper grade, to be furnished by the city surveyor. Wherever the streets are not yet paved the lines of the tracks within the rails shall be paved with either round stones or with four-by-five-inch scantling, in the best workmanlike manner, and the space between the lines of track and the gutters of the streets shall be planked with yellow-pine planks three inches thick,
290 laid on stringers of four inches thick by eight inches wide;

the timber used to be of the best quality and to the entire satisfaction of the administrator of improvements and city surveyor. The rails shall be of the same pattern as those now in use. The cross-ties shall be of yellow pine, six by eight inches and eight feet long, the string pieces of yellow pine, five by eight inches, all of the best quality of lumber and to the entire satisfaction of the administrator of improvements and city surveyor.

"Should the purchaser or purchasers at any time refuse to comply with any or all the requirements of these specifications or fail to comply with the notifications of the administrator of improvements and the city surveyor or refuse or neglect to keep the streets and bridges in good order and condition, he or they or their authorized representatives shall be subject to a fine of $25 or thirty days' imprisonment for each and every offense, at the discretion of the court; said fine to be recoverable before the recorder of the municipal district in which the offense was committed.

"The fare on the Camp and Magazine line between Canal and Toledano streets or for any lesser distance between those points shall not exceed five cents *for* passenger either way, except as is hereinafter provided.

"The fare on the Camp and Prytania line between Canal and Toledano streets shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Rampart and Dauphine line between Canal street and the United States barracks shall not exceed five cents per passenger either way, except as hereinafter provided.

"The fare on the Canal Street and Metairie Road line from neutral ground on Canal street, between Carondelet and St. Charles, to Metairie ridge or cemeteries shall not exceed five cents per passenger either way, except as is hereinafter provided.

"The fare on the Esplanade and Bayou Bridge line from Canal street to Bayou bridge shall not exceed five cents per passenger either way, except as hereinafter provided.

291 "They shall further be allowed to charge five cents from the new canal to Bayou St. John, on the Ridge line.

"The style of cars used to be the same as those now in use, unless some improved and advantageous pattern is introduced during the existence of this contract, when, upon application to and approval by the council, the same may be changed.

"The cars shall be drawn by horse or mule power, and if more than one horse or mule be used for each car they shall be driven abreast.

"Said cars shall be run as often during the day or night as the purchasers may deem proper, but not at greater intervals than every ten minutes from daylight to 10 o'clock p. m., and every fifteen minutes from 10 o'clock until 12.30 o'clock a. m., and every hour thereafter until daylight on the Camp and Magazine, the Camp and Prytania, the Rampart and Dauphine to Poland street, the Esplanade and Bayou Bridge, and the Canal and Ridge line to Broad-street station. For each and every fare after 12.30 o'clock they shall be allowed to charge twenty-five cents.

"Said purchaser or purchasers shall annually pay into the city treasury, upon the assessed value of said road and fixtures, the annual tax levied upon real estate; the value of said road and fixtures to be assessed by the usual mode of assessment. The speed of said cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good and ample head-light placed in a conspicuous position in and on said cars, and for the violation of this or any other ordinance now existing or that may hereafter be enacted in accordance with the provisions of these specifications on the part of any officer or employee of said roads the purchaser or purchasers shall be liable to all fines and damages arising therefrom.

"The city binds herself to transfer to the purchaser or purchasers of the franchises of the New Orleans City railroad, as herein set forth, the right of reversion which the city now has to purchase all the property, cars, fixtures, and other appurtenances of each line at an appraised value in accordance with the following section of their present contract, to wit:

292 "'The said railroads, cars, fixtures, and other appurtenances shall revert to the city at the expiration of the said twenty years' privilege, on a valuation to be ascertained by two disinterested persons, one to be appointed by the purchaser or purchasers and the other by the city; and in the event of a disagreement as to said valuation between said persons a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final.'

"The rights of way are for street railroads carrying passengers only.

"It is understood that the purchaser or purchasers are allowed to make such turn-outs and crossings as may be necessary, on the streets through which they have the right of way, on lines and levels to be furnished by the city surveyor.

"The city of New Orleans binds herself not to grant, during the period for which said franchises are sold, a right of way to any other railroad company upon the streets through which said right of way is hereby sold unless by mutual agreement between the city and the purchaser or purchasers of these franchises.

"The purchaser or purchasers are not to change any of the tracks from the lines and levels now existing without the consent of the city council.

"The city reserves the right to limit the running of steam trains on Canal street to any part where the council may deem it expedient and necessary in the interests of the property-holders or the community at large.

"The city reserves the right to reject any and all bids, and the sale and adjudication shall not be considered as perfected and binding upon the city of New Orleans until the purchaser or purchasers shall have delivered, paid, and deposited the full amount of the price of the bid with whomsoever may be designated by the mayor to receive the same for and on behalf of the city; and until such deposit and payment of the price shall have been made and accepted

by the council the adjudication shall not bind the city nor operate as an engagement or contract.

"(Signed) J. HENRY BEHAN,
"*Administrator of Commerce.*"

293 And now the said Frederick Wintz, as president aforesaid, declares that he does by these presents, in his said capacity, bind and obligate the said New Orleans City Railroad Company, its successors, assignees, transferees, and vendees, at all times to abide by, comply with, conform to, and observe all and singular the terms, conditions, clauses, stipulations, regulations, and penalties of the said specifications, and to enjoy and exercise the hereinconveyed right of way strictly in accordance with the said specifications.

This sale, in conformity with the proposal made by the said New Orleans City Railroad Company and accepted by the city of New Orleans, is made and accepted, for and in consideration of the price and sum of six hundred and thirty thousand dollars, for the full term and period hereinabove fixed and determined, payable cash:

Now, therefore, in conformity with the terms of the present sale, and it being the true intent of the city to make delivery hereby, and the said New Orleans City Railroad Company being in full possession and acknowledging, as the said Frederick Wintz, as president aforesaid, does hereby acknowledge, for and in the name of the said New Orleans City Railroad Company, due delivery of all the property, cars, fixtures, and other appurtenances belonging or in anywise appertaining to said railroad lines, the said Frederick Wintz, as president of the said New Orleans City Railroad Company, has paid cash the said sum of six hundred and thirty thousand dollars ($630,000) into the department of finance of the city of New Orleans, as appears by the receipt of the administrator of finance, hereto annexed for reference.

And the said mayor, Isaac W. Patton, declared that by virtue of the authority in him vested by the said resolution No. 6148, administration series, he does by these pre ents, in his said capacity and for and in the name and on behalf of the city of New Orleans, acknowledge that the payment of the said purchase price has been duly made by the said New Orleans City Railroad Company; that he does hereby accept the payment of the said purchase price and give full and ample acquittance and discharge for the same.

294 Thus done and passed, in New Orleans, at my office, the day, month, and year first above written, in the presence of Minor Martin Elmore and William H. Hyatt, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Original signed) I. W. PATTON,
Mayor City of New Orleans.
F. WINTZ.
President N. O. City R. R. Co.
MINOR M. ELMORE.
WILLIAM H. HYATT.
G. LEGARDEUR, JR.,
Notary Public.

A true copy of the original on file and on record in my office.
New Orleans, Oct. 3d, 1879.

G. LEGARDEUR, JR.,
Notary Public.

295 *Resolutions of Board of Directors of the New Orleans City Railroad Company Annexed to Foregoing Act.*

Called meeting, September 1st, 1879.

Resolved, That the resolutions already passed authorizing the committee, consisting of the president and Mr. J. A. Walker, to purchase the franchises and rights of way of the New Orleans City Railroad Company as now advertised by authority of the city is hereby confirmed, and in pursuance thereof the president and secretary are authorized to sign and issue promissory notes of the company for said purchase, if any are required in the premises.

Called meeting, September 22nd, 1879.

Resolved, three-fourths of the board being present and concurring, That the resolutions heretofore adopted relating to the purchase of the franchises and rights of way of this company from the city of New Orleans for twenty-five years from expiration of existing franchises be, and the same are hereby, ratified and confirmed, and that the president and secretary are hereby authorized to issue notes of the company to the amount of six hundred and thirty thousand dollars, or for so much thereof as may be required, payable in such terms and conditions as may be necessary, to effect a loan in order to procure the funds required for said purchase.

296 *Resolution of Board of Directors of the New Orleans City Railroad Company Affirming Foregoing Act.*

Regular meeting, October 10th, 1879.

Resolved, three-fourths of the board being present and concurring, That all and singular the acts of the president of the New Orleans City Railroad Company in the matter of the purchase of the rights of way and franchises of the company lately adjudicated to said company by the city of New Orleans be, and the same are hereby, ratified and confirmed, and that the contract signed by the president in accordance with said adjudication be, and the same is hereby, adopted, concurred in, and ratified.

City Ordinances Relating to Foregoing Act.

Ordinance No. 6109, administration series.

Be it resolved, That the specifications on page 7, first section of ordinance No. 4968, A. S., be amended to read as follows: Instead of "single track on Camp street from Poydras to Canal street"

should read "single track Camp street from Canal to St. Andrew street."

Adopted by the council of the city of New Orleans August 20th, 1879.

Ordinance No. 6111, administration series.

Whereas there seems by certain publications in the newspapers to be some misconception of the terms of the proposed sale of the franchises of the New Orleans City Railroad Company:

SECTION 1. Be it resolved by the common council of the city of New Orleans, That, as said sale is advertised for cash, any attempt on the part of the purchaser or purchasers to evade the conditions of the sale by offering in payment of his or their bid city obligations of any kind shall be deemed an express and solemn waiver of his bid, a forfeiture of the deposit required by the specifications of terms of sale, and a voluntary annulment of any adjudication that may have been made to him or them.

297 SEC. 2. Be it further resolved, That said specifications shall be construed to mean, as they plainly do mean, that the purchaser of the said franchises shall by his act of purchase be subrogated to all the rights and obligations of the city of New Orleans with reference to the right of reversion set forth in said specifications, and shall be bound to exercise said right of reversion unless he or they and the railroad company should choose to modify the terms of the contract.

SEC. 3. Be it further resolved, That all of the sealed proposals which may be presented on or before the 1st of September, 1879, for the purchase of said railroad franchises shall have endorsed across their face the words, "This bid is made subject to the provisions of ordinance No. 6111, A. S.," specifying the number of this ordinance, and no bid shall be considered a bid unless it is so endorsed.

SEC. 4. Be it further resolved, That on the said 1st of September, 1879, before said sealed proposals are opened, the mayor shall read this ordinance aloud, and, after reading the same, shall wait ten minutes, to give all those persons who have not complied with its terms time within which they may do so.

Adopted by the council of the city of New Orleans August 26th, 1879.

Ordinance No. 6112, administration series.

An ordinance appropriating the funds to be derived from the sale of the franchises and right of reversion of the New Orleans City Railroad Company.

Be it ordained by the council of the city of New Orleans, That the funds which will accrue to the city from the sale of the franchises and right of reversion of the New Orleans City Railroad Company be, and the same are hereby, inviolably appropriated, in accordance with the provisions of section 10 of act No. 31 of the acts of 1876, to the retirement of the bonded or floating debt of the city of New Orleans.

Adopted by the council of the city of New Orleans August 26th, 1879.

Ordinance No. 6148, administration series.

Be it ordained, That in consideration of the bid of the New Orleans City Railroad Company of $630,000 for the franchises and right of way of the following city railroads, to wit:

Camp and Prytania,
Camp and Magazine,
Rampart and Dauphine,
Canal Street and Metairie Road and Bayou St. John,
Esplanade and Bayou Bridge,

was the highest, and in further consideration that the said company agree to pay the amount of their said bid in cash, that the said franchises and rights of way be, and they are hereby, now adjudicated to said company, and that the mayor be authorized and instructed, on payment of said amount, to sign a contract with the said New Orleans and City Railroad Company, by notarial act before the city notary, for the sale and delivery of said franchises, according to specifications on file in the office of the administrator of commerce, as herein modified and amended.

Adopted by the council of the city of New Orleans October 2nd, 1879.

298 Ordinance No. 6160, administration series.

Whereas the mayor has informed the council that he has signed the contract adjudicating the right of way on

Camp and Prytania,
Camp and Magazine,
Rampart and Dauphine,
Canal Street and Metairie Road and Bayou St. John,
Esplanade and Bayou Bridge to the city railroad company:

Therefore

Be it resolved, That the action of the mayor in signing said contract be, and the same is hereby, approved.

Be it further resolved, That the adjudication made to the city railroad company by the council, as per ordinance No. 6148, A. S., and the contract signed before the city notary, in compliance therewith, be, and the same is hereby, confirmed, ratified, and approved.

Adopted by the city council of New Orleans October 14th, 1879.

299 *Amendatory Contract with the City of New Orleans.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this fourth day of June, in the year of our Lord one thousand eight hundred and eighty-two—

Before me, Samuel Flower, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and

in the presence of witnesses hereinafter named and undersigned, personally came and appeared—

The Honorable Joseph A. Shakspeare, mayor of the city of New Orleans, and herein acting in his official capacity as mayor.

And also came and personally appeared Frederick Wintz, of this city, president of the New Orleans City Railroad Company, acting in said capacity and duly authorized as such in the execution of these presents, which said appearers severally declared as follows, to wit:

Whereas the council of the city of New Orleans, at its session held on the 31st day of May, 1881, adopted an ordinance in the words and figures following, to wit:

Ordinance No. 7127, administration series.

Whereas, October 2nd, 1879, pursuant to resolution No. 6148, administration series, and the adjudication thereunder made, the city of New Orleans entered into, before Gustave Le Gardeur, Jr., notary public, a contract of sale with the New Orleans City Railroad Company, whereby it was stipulated that the city did grant, bargain, convey, transfer, assign, and set over unto said company, in consideration of the sum of $630,000 cash paid, the right of way and franchises to certain street railways therein designated; and

Whereas, according to "first section" of said contract, the Camp and Prytania and Camp and Magazine Street lines of street railw y were included in said sale for the full term and period commencing on and to be computed from the third day of February, 1880, and to end on the first day of January, 1906; and

300 Whereas there appears to be an omission, owing to clerical error, in the specifications of the said contract where the same specifies that the roads conveyed run through certain streets, in this respect, that the said contract recites the above-mentioned roads passing through the streets hereinafter maned, with tracks, turnouts, turn-tables, to wit:

The Camp and Prytania and Camp and Magazine lines: Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track on Magazine street from Canal street to St. Andrew street; double track on Magazine street from St. Andrew to Toledano street; double track on Prytania street from Poeyfarre street to Toledano street; single track on Camp street from Poeyfarre to Canal street; single track on Poeyfarre street from Magazine to Camp street; single track on Toledano street from Camp to Prytania street, while it ought to have been further specified as part of the Camp and Magazine Street line of street railroads, sold to the said New Orleans City Railroad Company, as follows: A single track on Camp street from Poeyfarre to St. Andrew street:

Be it ordained, etc., That the true intent and meaning of the said adjudication and sale of October 2nd, 1879, by the city of New Orleans to the New Orleans City Railroad Company of the franchises and right of way of certain street railways in the city was to include and does of right include and comprise, as part of the Camp and

Magazine Street line of the said company, a single track of street railway on Camp street from Poeyfarre to St. Andrew street, and that the mayor be, and he is hereby, authorized to enter into and execute with the New Orleans City Railroad Company a public act before the city notary amendatory of the specifications of the said act of October 2nd, 1879, and confirmatory of the said act recognizing and declaring the said company to be entitled of right and lawfully possessed of the said single track on Camp street from Poeyfarre street to St. Andrew street, with the rights and franchises thereunto appertaining, as forming part of the Camp and Magazine Street line by the said adjudication and contract of October 2nd, 1879.

Which said ordinance No. 7127 was promulgated in the official journal of the city of New Orleans on this fourth day of June, 1881, and a certified copy of which is annexed to and made part of this act:

Now, therefore, the said Joseph A. Shakspeare, acting in his official capacity of mayor aforesaid and by virtue of the authority in him vested by said resolution or ordinance No. 7127 afore recited and copy thereof hereto annexed and in the name and on behalf of the city of New Orleans, does by these presents amend the above-recited portion of the specifications of the contract entered into between the City of New Orleans and the New Orleans City Railroad Company before G. Le Gardeur, Jr., notary public, on the second day of October, 1879, wherein is specified the streets through which the roads shall run for the Camp and Prytyania and Camp and Magazine Street lines, so that the same shall read as follows:

301

"The Camp and Prytania and Camp and Magazine lines: Three tracks on Canal street from St. Charles to Camp street; single track on Canal street from Magazine to Camp street; single track on Magazine street from Canal to St. Andrew street; double track on Magazine street from St. Andrew to Toledano street; double track on Prytania street from Poeyfarre to Toledano street; single track on Poeyfarre street from Magazine to Camp street; single track on Camp street from Poeyfarre to St. Andrew street; single track on Toledano street from Camp to Prytania street."

And hereby further confirms said contract as thus amended to the said New Orleans City Railroad Company, herein accepting same through the said Frederick Wintz, president as aforesaid, subject otherwise to all the terms, conditions, clauses, stipulations, regulations, and penalties of the specifications of said original contract, it being recognized and declared hereby that the said company is entitled of right and lawfully possessed of the said single track on Camp street from Poeyfarre street to St. Andrew street, with the rights and franchises thereunto appertaining, as forming part of the Camp and Magazine Street line by the said adjudication and contract of October 2nd, 1879.

Thus done and passed, at my office, in the city of New Orleans, in the presence of Samuel Alston and F. P. Stuart, witnesses of lawful age, residing in the city of New Orleans, who have hereunto signed their names, together with the said appearers and me, official notary,

of the city of New Orleans, the day, month, and year first above written.

(Original signed) JOS. A. SHAKSPEARE, *Mayor.*
F. WINTZ, *President.*

SAMUEL ALSTON.
F. P. STUART.

SAM'L FLOWER,
Notary Public and City Notary.

302 *Contract, City of New Orleans with J. B. Slawson, for Right of Way for City Railroads on Magazine, Camp, Prytania, Rampart, and Dauphin Streets.*

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this seventh day of the month of February, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth of the Independence of the United States of America, before me, Charles Edward Fortier, notary public in and for the parish of Orleans and city of New Orleans and official notary for said city, duly commissioned and sworn, and in the presence of the undersigned witnesses, personally came and appeared the Honorable Gerard Stith, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, Esq., of the city of New Orleans.

And the said Gerard Stith, acting as aforesaid, declared that by virtue of the authority in him vested by resolution number four thousand nine hundred and forty-five, passed by the common council of the city of New Orleans and approved on the third day of February, 1860, a copy whereof is hereto annexed for future reference, and in confirmation of the sale and adjudication made by the city comptroller on the twentieth day of the month of January, eighteen hundred and sixty, as it will appear by reference to the process verbal hereto annexed—

He does by these presents grant, bargain, sell, and confirm unto the said J. B. Slawson the privilege of the right of way for twenty years of two railroads, to wit:

A single-track railroad commencing on Eighth street, at its junction with Prytania street; down Prytania and Camp
303 streets to the south side of Canal street; down the south side of Canal street to Rampart street, and along the west side of Rampart street to the United States barracks, and running along Dauphin street, in the third district, to Esplanade street; then along the north side of Esplanade street to the east side of Rampart street; then along the east side of Rampart street to Canal street; then along the north side of Canal street to Magazine street, through Magazine to Eighth street, and down Eighth street to its junction with Prytania street.

The said J. B. Slawson hereby binds himself to perform and execute the said work in accordance with the specifications on file in

the surveyor's office, a copy whereof is hereto annexed, the said specifications reading as follows:

The tracks in Camp, Prytania, and Magazine streets shall be laid in the centre of the said streets, and in Canal and Rampart streets to Esplanade street at the distance of five feet from the neutral ground, and below Esplanade street in the centre of Rampart and Dauphin streets.

The contractor or contractors shall be bound to construct through the above-named streets, within the time here below fixed, — single-track railroad. The tracks shall be of five feet two and five-eighths inches gauge. The rails shall be of the same pattern as those in use in the city of Philadelphia, a sample of which can be seen in the surveyor's office. The materials for the construction of the roads shall be of the best quality, and shall have the following dimensions, to wit: The cross-ties shall be of yellow pine six by eight inches and eight feet long; the string pieces of yellow pine, five by eight inches. The paving of the streets, where the same are paved, shall be taken up, the streets shall be graded to a proper grade, to be established by the city surveyor, and shall receive a layer of four inches of London gravel, which shall be perfectly well rammed until it forms a hard foundation. The cross-ties shall then be laid at distances of two feet apart. On the top of said cross-ties the string pieces shall be placed, and on the top of said string pieces the iron rails shall be placed. The rails shall not weigh less than forty-five pounds to the yard. The paving of the streets shall then be relaid by the contractor, in the best workmanlike manner and to the entire satisfaction of the city surveyor. Wherever the
304 streets are not paved the lines of said tracks within the rails shall be paved with round stones, in the best workmanlike manner and to the entire satisfaction of the city surveyor.

The cars shall be of the same description as those used in the city of Philadelphia and of such dimensions as will seat thirty persons. The cars shall be drawn by horses or mules, and if more than one horse or mule be used for each car they shall be driven abreast. The cars shall be run as often per day and night as the contractor or contractors may deem proper, but not at greater intervals than every ten minutes from daylight until ten o'clock p. m. and every thirty minutes from ten o'clock p. m. until midnight. The speed of the cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good and ample head and rear light, placed in a conspicuous position on the outside of the cars, and for the violation of this or of any other ordinance now existing or that may hereafter be enacted on the part of any officer or employee on said roads the contractor or contractors shall be liable to a fine of ten dollars for each and every offense, besides all damages arising therefrom.

The contractor or contractors shall be bound to keep in good repair and condition, during the continuance of their privilege, the paved and unpaved streets through which said tracks pass, as well as all the bridges on said streets, and should the contractor or contractors refuse or neglect to keep said streets and bridges in good

order and condition the city shall have the right to cause said streets and bridges to be repaired at the expense of said contractor or contractors, and in the event of their refusal to pay for the same the amount shall be recoverable before any court of competent jurisdiction for the benefit of the city.

The first-mentioned track shall be used exclusively for cars passing up and the other for cars passing down.

The said roads shall be commenced simultaneously at Canal street, working up and down to a completion of the whole work, the contractor or contractors binding himself or themselves to commence the work within six months from the approval of their proposal by the common council and to complete the same within eighteen months after.

305 The contractor or contractors shall be bound to place and keep on said roads a sufficient number of passenger cars, to be drawn by horses or mules as aforesaid, so as to make trips up and down said roads as hereinbefore required, and shall also provide for all materials and labor required for the construction and maintenance of said roads.

The city of New Orleans shall not be responsible for any work or materials furnished for these roads; every outlay and expense thereon, either for the construction, repairs, or any other expense of whatever kind, shall be borne by the contractor or contractors.

The contractor or contractors shall furnish good and solvent security, satisfactory to the common council, in the sum of ten thousand dollars, to guarantee the faithful performance of the contracts.

The fare between Canal street and Eighth street, or for any distance between these points, shall not exceed five cents per passenger either way, and the fare between Canal street and the United States barracks shall not exceed five cents per passenger either way.

The contractor or contractors shall annually pay into the city treasury, upon the assessed value of said roads and fixtures, the annual tax levied upon real estate, and the value of said roads and fixtures shall be assessed by the usual mode of assessment.

The roads shall be constructed under the supervision of the city surveyor and in accordance with the lines and grades to be given by said officer.

It is well understood that in case of failure by the contractor or contractors to begin or finish said roads or any part thereof within the period fixed, or in case the common council be dissatisfied with the manner in which the work is being executed, the common council shall have the right to annul the contract without putting the contractors in default, as required by article 1905 of the Civil Code, and without applying to a court of justice to annul the same and without indemnity; and it is well understood that in case the contractor or contractors shall at any time abandon the work or not finish and complete the same in conformity with his or their contract the said contractor or contractors shall forfeit all claims

306 he or they may have for any part of the work done by them up to the date of the abandonment, and that the city shall be thereby discharged and released from any and all liability therefor;

and it is also well understood that in case of such annulment of the contract or of such abandonment by the contractor or contractors the city of New Orleans shall have the right to resell the contract at the risk and peril of the contractor or contractors and their securities *in solido*.

The right of way shall be awarded to the parties offering the largest bonus for the privilege and the money shall be paid within thirty days from the date of contract. All proposals must be directed to the city comptroller and endorsed, the said proposals to be opened by the comptroller in the presence of the chairmen of the committees on finance and streets and landings of both boards, and said proposals shall be subject to approval or rejection by the common council.

The said railroads, cars, fixtures, and other appurtenances shall revert to the city at the expiration of said twenty years' privilege, on a valuation to be ascertained by two disinterested persons, one to be appointed by the contractor or contractors and the other by the city, and in the event of a disagreement as to said valuation between said persons thus appointed a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final.

LOUIS H. PILIE,
City Surveyor.

New Orleans, February 21, 1859.

Approved by the committees on streets and landings of both boards of the common council.

H. T. VENNARD,
ROB'T HUYGHE,
Chairmen.

The privilege of right of way for twenty years of two railroads is granted by the city of New Orleans to said J. B. Slawson for and in consideration of the price and sum of one hundred and thirty thousand dollars, in part payment and deduction whereof the said J. B. Slawson has paid in cash to the said mayor the sum of twenty-six thousand dollars, and for the balance, amounting to one hundred and four thousand dollars, the said J. B. Slawson has furnished four
certain promissory notes for twenty-six thousand dollars each,
307 drawn by him to the order of Henry Hart, Frederick Wintz,
and Patrick Irwin, and by them endorsed, dated this day, and payable respectively at the Louisiana State Bank in this city at one, two, three, and four years from date, with six per cent. interest per annum from date until paid or final payment, which notes were signed and paraphed "*ne varietur*" by the undersigned notary to identify them herewith, and were handed over to the said mayor, who hereby acknowledges the receipt of the same, as well as of said ready cash, and grants full discharge therefor.

It is well understood between said parties that in case of any neglect on the part of the contractor to comply strictly with the above specifications the council reserves the right to declare the contract

ipso facto null and void without applying to a court of justice and without indemnifying the contractor; and it is further understood that upon any failure of the contractor to comply strictly with the terms and conditions of his contract he shall be deemed to be in default by the mere fact of his failure.

And now personally came and appeared Messrs. Henry Hart, Frederick Wintz, and Patrick Irwin, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said J. B. Slawson, and bind themselves in favor of said city in the sum of ten thousand dollars, payable on demand to said corporation.

Now, the condition of the above-written bond or obligation is such that if J. B. Slawson shall well, truly, and faithfully perform and execute the present contract in accordance with the above specifications, then the above-written bond or obligation to be null and void, but otherwise to be and remain in full force and virtue. The said Hart, Wintz, and Irwin hereby waive the benefit of division and discussion granted by law to securities.

Done and passed in my office, at New Orleans, the day, month, and year first above written, in presence of Oscar Le Blanc and Alcie Morel, competent witnesses of lawful age domiciliated
308 in this city, who have hereunto signed their names with the said parties and me, the notary, after due reading of the foregoing.

(Original signed) J. B. SLAWSON.
F. WINTZ.
PATRICK IRWIN.
HENRY HART.
GERARD STITH, *Mayor.*
OSCAR LE BLANC.
ALCIE MOREL.
CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

309 *Contract, City of New Orleans with J. B. Slawson, for Right of Way for City Railroads on Canal Street and Metairie Road to Bayou St. John Bridge.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this the second day of the month of July, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth of the Independence of the United States of America, before me, Charles Edward Fortier, notary public in and for the parish and city of New Orleans and official notary for said city, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the Honorable John

T. Monroe, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, Esq., of the city of New Orleans.

And the said John T. Monroe, acting as aforesaid, declared that by virtue of the authority in him vested by resolution number five thousand two hundred and forty-four, passed by the common council of the city of New Orleans and approved on the twenty-third day of June, 1860, a copy whereof is hereto annexed for future reference, and in confirmation of the sale and adjudication made by the city comptroller on the second day of June, 1860, as it will appear by reference to the process verbal hereto annexed—

He does by these presents grant, bargain, sell, and confirm unto the said John B. Slawson the contract for the right of way of twenty years of a double-track railroad on Canal street from Rampart street to the Metairie road; thence down the Metairie road to Bayou St. John bridge.

310 The said John B. Slawson binds himself to perform and execute the said work in accordance with the specifications on file in the surveyor's office, a copy of which is hereto annexed; said specifications reading as follows:

Specifications concerning the right of way of twenty years of a double-track railroad on Canal street from Rampart street to the Metairie road; thence down said Metairie road to the Bayou St. John bridge.

One of the tracks shall be constructed on the northeast side of Canal street at ten feet from the curbstones bordering the neutral ground, commencing at Rampart street and running down in a straight line to Metairie road, from thence at four feet from the centre of said Metairie road down to the Bayou St. John bridge; and the other on the southwest side of said Canal street at ten feet from the curbstones bordering the neutral ground, commencing at Rampart street and running down in a straight line to Metairie road, from thence at four feet from the centre of said Metairie road down to the Bayou bridge.

The contractor or contractors shall be bound to construct through the above-named streets and road, within the time fixed, double-track railroads. The rails shall be of the same pattern as those in use in the city of Philadelphia, a sample of which can be seen in the surveyor's office. The tracks shall be of five feet two and five-eighths inches gauge.

The materials for the construction of the roads shall be of the best quality, and shall have the following dimensions, to wit: The cross-ties shall be either of cypress or yellow pine, six by eight inches and eight feet long, and the string pieces either of cypress or yellow pine, five by eight inches.

The paving of the streets where the same are paved, as well as the shelling of the street where the same is shelled, shall be taken up; the street shall be graded to a proper grade, to be established by the city surveyor, and shall receive a layer of four inches of London

gravel, which shall be perfectly well rammed until it receives a hard foundation. The cross-ties shall then be laid at distances of two feet apart; on top of said cross-ties string pieces shall be placed, and on the top of said string pieces the iron rails shall be placed. The rails shall not weigh less than forty-five pounds to the yard.

311 The paving and shelling of the streets shall then be relaid by the contractor or contractors in the best workmanlike manner and to the entire satisfaction of the city surveyor.

Wherever the streets are not yet paved the lines of said tracks within the rails shall be paved with round stones in the best workmanlike manner and to the entire satisfaction of the city surveyor.

The cars shall be of the same description as those used in the city of Philadelphia and of such dimensions as will seat thirty persons.

The cars shall be drawn by horses or mules, and if more than one horse or mule be used for each car they shall be driven abreast. The cars shall be run as often per day and night as the contractor or contractors may deem proper, but not at greater intervals than every fifteen minutes from daylight until ten o'clock and every thirty minutes from ten o'clock p. m. until midnight. The speed of the cars shall not exceed six miles per hour. All cars that may be run on said roads between sunset and daybreak shall be provided with a good and ample head and rear light, placed in a conspicuous position on the outside of the cars, and for the violation of this clause or of any ordinance now existing or that may hereafter be enacted on the part of any officer or employee on said roads the contractor or contractors shall be liable to a fine of ten dollars for each and every offence besides all damages arising therefrom. The contractor or contractors shall be bound to keep in good repair and condition during the continuance of their privilege the paved and unpaved streets through which the said tracks pass, as well as all the bridges on said streets, and should the contractor or contractors refuse or neglect to keep said streets and bridges in good order and condition the city shall have the right to cause said streets and bridges to be repaired at the expense of said contractor or contractors, and in the event of their refusal to pay for the same the amount shall be recoverable before any court of competent jurisdiction for the benefit of the city.

The northeastern track shall be used exclusively for cars running from the city to the Bayou bridge, and the southwestern track for cars running from the Bayou bridge to the city.

312 The track shall be commenced simultaneously at Rampart street, running down towards a completion of the whole work, the contractor or contractors binding himself or themselves to commence the work within four months from the approval of the adjudication by the common council and to complete the same within one year after.

The contractor or contractors shall be bound to place and keep on said roads a sufficient number of passenger cars, to be drawn by horses or mules as aforesaid, so as to make trips up and down said

roads as hereinbefore required, and shall also provide for all materials and labor required for the construction and maintenance of said roads.

The city of New Orleans shall not be liable for any works or materials furnished for these roads, and every outlay and expense thereon, either for the construction, repairs, or any other expense, of whatever kind, shall be borne by the contractor or contractors.

The contractor or contractors shall furnish good and solvent security, satisfactory to the common council, in the sum of ten thousand dollars to guarantee the faithful performance of the contract.

The fare between Rampart street and the Bayou bridge or for any distance between these points shall not exceed ten cents per passenger either way.

The contractor or contractors shall annually pay into the city treasury upon the assessed value of said roads and fixtures the annual tax levied upon real estate, and the value of said roads and fixtures shall be assessed by the usual mode of assessment.

The road shall be constructed under the supervision of the city surveyor and in accordance with the lines and grades to be given by said officer.

It is well understood that in case of failure by the contractor to begin or finish the work or any part thereof within the period fixed or in case the council be dissatisfied with the manner in which the work is being executed the council shall have the right to annul the contract without putting the contractor in default, as re-
313 quired by article 1905 of the Civil Code, and without applying to a court of justice to annul the same and without indemnity; and it is also well understood that in case the contractor shall at any time abandon the work or not finish and complete the same in conformity with his contract the contractor shall forfeit all claims he may have for any part of the work done by him up to the date of the abandonment, and that the city shall thereby be discharged and released from any and all liability therefor; and it is also well understood that in case of such annulment of the contract or of such abandonment by the contractor the city of New Orleans shall have the right to resell the contract at the risk and peril of the contractor and his securities *in solido*.

The right of way shall be awarded to the party or parties offering the largest bonus for the privilege, said bonus to be paid for as follows, to wit: One-fifth in cash on signing the contract before the city notary, and the balance at one, two, three, and four years, in notes of the purchaser or purchasers, endorsed to the satisfaction of the finance committee, with interest at the rate of six per cent. per annum.

The said railroads, cars, fixtures, and other appurtenances shall revert to the city at the expiration of said twenty years' privilege on a valuation to be ascertained by two disinterested persons, one to be appointed by the contractor or contractors and the other by the city, and in the event of a disagreement as to said valuation between said persons thus appointed a third party or umpire shall

be appointed by one of the district courts, the decision thereby had to be final.

New Orleans, 7th May, 1860.

(Signed) LOUIS H. PILIE,
City Surveyor.

Approved by the committee on streets and landings.

(Signed) H. T. VENNARD,
ROB'T HUYGHE, *Chairmen.*

The privilege of right of way for twenty years of said railroads is granted by the city of New Orleans to said John B. Slawson for and in consideration of the price and sum of five hundred dollars. In part payment and deduction thereof the said John B. Slawson has paid in cash to the said mayor the sum of one hundred dollars,
314 and for the balance, amounting to four hundred dollars, the said J. B. Slawson has furnished four certain promissory notes for one hundred dollars each, drawn by him to the order of Henry Hart, Frederick Wintz, and Patrick Irwin and by them endorsed, dated this day, and payable respectively at the Louisiana State Bank, in this city, at one, two, three, and four years from date, with six per cent. interest per annum from date until final payment, which notes were signed and paraphed "*ne varietur*" by the undersigned notary to identify them herewith, were handed over to the said mayor, who hereby acknowledges the receipt of the same, as well as of said ready cash, and grants a full discharge therefor.

It is well understood between said parties that in case of any neglect on the part of the contractor to comply strictly with the above specifications the council reserves the right to declare the contract *ipso facto* null and void without applying to a court of justice and without indemnifying the contractor; and it is further understood that upon any failure of the contractor to comply strictly with the terms and conditions of his contract he shall be deemed to be in default by the mere act of his failure.

And now personally came and appeared Messrs. Henry Hart, Frederick Wintz, and Patrick Irwin, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said J. B. Slawson and bind themselves in favor of said city in the sum of ten thousand dollars, payable on demand to said city of New Orleans.

Now, the condition of the above-written bond or obligation is such that if the said J. B. Slawson shall well, truly, and faithfully perform and execute the present contract in accordance with the above specifications, then the above-written bond or obligation to be null and void, but otherwise to be and remain in full force and virtue. The said Hart, Wintz, and Irwin hereby waive the benefit of division and discussion granted by law to securities.

Done and passed, in my office, at New Orleans, the day, month, and year first above written, in presence of Laronde D. Jorda
315 and Pierre Adelarde Fortier, competent witnesses, of lawful age, residing in this city, who have hereto signed their

names with the said parties and me, notary, after due reading of the whole.

JOHN T. MONROE.
J. B. SLAWSON.
HENRY HART.
FREDERICK WINTZ.
PATRICK IRWIN.
LARONDE D. JORDA.
P. AD. FORTIER.
CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

316 *Contract, City of New Orleans with J. B. Slawson, for Right of Way for City Railroads on Esplanade Street to Bayou Bridge.*

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this second day of the month of July, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth of the Independence of the United States of America, before me, Charles Edward Fortier, notary public in and for the parish of Orleans and city of New Orleans and official notary for said city, duly commissioned and sworn, and in the presence of the undersigned witnesses, personally came and appeared the Honorable John T. Monroe, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, Esq., of the city of New Orleans.

And the said John T. Monroe, acting as aforesaid, declared that by virtue of the authority in him vested by resolution number five thousand two hundred and forty-four, passed by the common council of the city of New Orleans and approved on the twenty-third day of June, 1860, a copy whereof is annexed to an act passed in this office on this day, and in confirmation of the sale and adjudication made by the city comptroller on the second day of June, 1860, as it will appear by reference to the proces verbal hereto annexed—

He does by these presents grant, bargain, sell, and confirm unto the said J. B. Slawson the contract of the right of way for twenty years for running cars on a double-track railroad in the centre of Esplanade street from Rampart street to the Bayou bridge.

317 The said J. B. Slawson hereby binds himself to perform and execute the said work in accordance with the specifications on file in the surveyor's office, a copy of which is hereto annexed, said specifications reading as follows :

Specifications concerning the sale of the right of way for twenty years for running cars on a double-track railroad in the centre of Esplanade street from Rampart street to the Bayou bridge.

The contractor or contractors shall be bound to construct through the above-named street within the time hereinafter fixed a double-track railroad.

The tracks shall be of five feet two and five-eighths inches gauge. The rails shall be of the same pattern as those in use in the city of Philadelphia, a sample of which can be seen in the surveyor's office. The materials for the construction of the road shall be of the best quality and shall have the following dimensions, to wit: The cross-ties shall be of cypress or yellow pine, six by eight inches and eight feet long, and the string pieces either of cypress or yellow pine, five by eight inches.

The paving of the streets where the same are paved, as well as the shelling of the street where the same is shelled, shall be taken up; the street shall be graded to a proper grade, to be established by the city surveyor, and shall receive a layer of four inches of London gravel, which shall be perfectly well rammed until it forms a hard foundation. The cross-ties shall then be laid at distances of two feet apart. On the top of said cross-ties the string pieces shall be placed, and on the top of said string pieces the iron rails shall be placed. The rails shall not weigh less than forty-five pounds to the yard. The paving and shelling of the street shall then be relaid by the contractor or contractors in the best workmanlike manner and to the entire satisfaction of the city surveyor. Wherever the street is not yet paved the lines of said tracks within the rails shall be paved with round stones in the best workmanlike manner and to the entire satisfaction of the city surveyor.

The cars shall be of the same description as those used in the city of Philadelphia and of such dimensions as will seat thirty persons.

The cars shall be drawn by horses or mules, and if more than
318 one horse or mule be used for each car they shall be driven abreast. The cars shall be run as often by day and night as the contractor or contractors may deem proper, but not at greater intervals than every fifteen minutes from daylight until ten o'clock p. m. and every thirty minutes from ten o'clock p. m. until midnight. The speed of the cars shall not exceed six miles per hour. All cars that may be run on said railroad between sunset and daybreak shall be provided with a good and ample head and rear light, placed in a conspicuous position on the outside of the cars, and for the violation of this clause or of any ordinance now existing or that may hereafter be enacted on the part of any officer or employee on said roads the contractor or contractors shall be liable to a fine of ten dollars for each and every offense besides all damages arising therefrom.

The contractor or contractors shall be bound to keep in good repair and condition during the continuance of the privilege the paved and unpaved portions of the streets through which said tracks pass, as well as all the bridges on said streets, and should the con-

tractor or contractors refuse or neglect to keep the said streets and bridges in good order and condition the city shall have the right to cause said streets and bridges to be repaired at the expense of said contractor or contractors, and in the event of their refusal to pay for the same the amount shall be recoverable before any court of competent jurisdiction for the benefit of the city.

The northeastern track shall be used exclusively for cars running from the city to the Bayou bridge, and the southwestern track for cars running from Bayou bridge to the city.

The work shall be commenced simultaneously at Rampart street, working down towards a completion of the whole work, the contractor or contractors binding himself or themselves to commence the work within four months from the approval of the adjudication by the common council and to complete the same within one year after.

The contractor or contractors shall be bound to place and keep on said road a sufficient number of passenger cars, to be drawn by horses or mules as aforesaid, so as to make trips up and down said road as hereinbefore required, and shall also provide for all materials and labor required for the construction and maintenance of said road.

319 The city of New Orleans shall not be liable for any work or materials furnished for the road, and every outlay and expense thereon, either for the construction, repairs, or any other expense, of whatever kind, shall be borne by the contractor or contractors.

The contractor or contractors shall furnish good and solvent security, satisfactory to the common council, in the sum of ten thousand dollars to guarantee the faithful performance of the contracts.

The fare between Rampart street and Bayou bridge or for any distance between these points shall not exceed ten cents per passenger either way.

The contractor or contractors shall annually pay into the city treasury upon the assessed value of said road and fixtures the annual tax levied upon real estate, and the value of said cars and fixtures shall be assessed by the usual mode of assessment.

The road shall be constructed under the supervision of the city surveyor in accordance with the lines and grades to be given by said officer.

It is well understood that in case of failure by the contractor to begin or finish the work or any part thereof within the period fixed or in case the common council be dissatisfied with the manner in which the work is being executed the common council shall have the right to annul the contract without putting the contractor in default, as required by article 1905 of the Civil Code, and without applying to a court of justice to annul the same and without indemnity; and it is also well understood that in case the contractor shall at any time abandon the work or not finish and complete the same in conformity with the contract the said contractor shall forfeit all claims he may have for any part of the work done by him up to the date of abandonment, and that the city shall be thereby discharged and

released from any and all liabilities therefor; and it is also well understood that in case of such annulment of the contract or of such abandonment by the contractor the city of New Orleans shall have the right to resell the contract at the risk and peril of the contractor and his securities *in solido*.

320 The right of way shall be awarded to the party or parties offering the largest bonus for the privilege, said bonus to be paid as follows, to wit: One-fifth in cash on signing the contract before the city notary, and the balance at one, two, three, and four years, in notes of the purchaser or purchasers, endorsed to the satisfaction of the finance committee, with interest at the rate of six per cent. per annum—

The said railroad, cars, fixtures, and other appurtenances to revert to the city at the expiration of said twenty years' privilege on a valuation to be ascertained by two disinterested persons, one to be appointed by the contractor or contractors and the other by the city, and in the event of a disagreement as to said valuation between said persons thus appointed a third party, or umpire, shall be appointed by one of the district courts, the decision thereby had to be final.

(Signed) LOUIS H. PILIE,
City Surveyor.

New Orleans, May 5, 1860.

Approved by the committees on streets and landings of both boards of the common council.

(Signed) H. T. VENNARD,
ROB'T HUYGHE,
Chairmen.

The privilege of the right of way for twenty years of said railroad is granted by the city of New Orleans to said John B. Slawson for and in consideration of the price and sum of five hundred dollars. In part payment and deduction thereof the said J. B. Slawson has paid in cash to the said mayor the sum of one hundred dollars, and for the balance, amounting to four hundred dollars, the said John B. Slawson has furnished four certain promissory notes for one hundred dollars each, drawn by him to the order of Henry Hart, Frederick Wintz, and Patrick Irwin, and by them endorsed, dated this day, and payable respectively at the Louisiana State Bank, in this city, at one, two, three, and four years from date, with six per cent. interest per annum from date until final payment; which notes were signed and paraphed "*Ne varietur*" by the undersigned notary to identify them herewith, were handed over to the said mayor, who hereby acknowledges the receipt of the same, as well as of ready cash, and grants full discharge therefor.

321 It is well understood between said parties that in case of any neglect on the part of the contractor to comply strictly with the above specifications the council reserves the right to declare the contract *ipso facto* null and void without applying to a court of justice and without indemnifying the contractor, and it is further understood that upon any failure of the contractor to com-

ply strictly with the terms and conditions of his contract he shall be deemed to be in default by the mere act of his failure.

And now personally came and appeared Messrs. Henry Hart, Frederick Wintz, and Patrick Irwin, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said J. B. Slawson and bind themselves in favor of said city in the sum of ten thousand dollars, payable on demand to said city of New Orleans.

Now, the condition of the above-written bond or obligation is such that if the said J. B. Slawson shall well, truly, and faithfully perform and execute the present contract in accordance with the above specifications, then the above-written bond or obligation to be null and void, but otherwise to be and remain in full force and virtue. The said Hart, Wintz, and Irwin hereby waive the benefit of division and discussion granted by law to securities.

Done and passed in my office, at New Orleans, the day, month, and year first above written, in presence of Laronde D. Jorda and P. Adelarde Fortier, competent witnesses of lawful age, residing in this city, who have hereunto signed their names with the said parties and me, notary, after due reading of the whole.

JOHN T. MONROE.
J. B. SLAWSON.
HENRY HART.
F. WINTZ.
PATRICK IRWIN.
LARONDE D. JORDA.
P. AD. FORTIER.

CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

322 *Change of Contract on Magazine, Camp, and Calliope Streets.*

Resolution of the common council of the city of New Orleans (No. 5230).

Resolved, That the mayor be, and he is hereby, authorized to change, per notarial act, the contract of J. B. Slawson, Esq., and his securities with the city of New Orleans for the right of way, construction of railroads, and running cars thereon for twenty years, provided all of said parties connected with said contract agree to said change and sign accordingly, viz:

1st. A single track on Magazine and Camp streets to their junction at the Magazine market and a double track on Magazine street from that point to the upper line of the city.

2d. A single track on Calliope street from Magazine to Camp

street and a double track on Prytania street from Camp to the upper line of the city.

(Signed) J. O. NIXON,
President Board of Aldermen.

(Signed) JOHN T. MONROE,
President Board of Assistant Aldermen.

Approved June 15th, 1860.

GERARD STITH, *Mayor.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this twenty-first day of the month of June, in the year of our Lord one thousand eight hundred and sixty, and the eighty-fourth of the Independence of these United States, before me, Charles Edward Fortier, notary public in and for the parish of Orleans and city of New Orleans and official notary for said
323 city, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the Honorable John T. Monroe, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, Esq., of the city of New Orleans.

And the said John T. Monroe, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 5230, passed by the common council of the city of New Orleans and approved on the fifteenth day of the month of June, 1860, a copy whereof is hereto annexed for reference, he does by these presents consent to change the contract between the city of New Orleans and John B. Slawson, passed before the undersigned notary on the seventh day of February, 1860, so far as to read as follows, viz:

1st. A single track on Magazine and Camp streets to their junction at the Magazine market and a double track on Magazine street from that point to the upper line of the city.

2d. A single track on Calliope street from Magazine to Camp street and a double track on Prytania street from Camp to the upper line of the city, all of which is accepted by the said John B. Slawson, here present.

And now personally came and appeared Messrs. Henry Hart, Frederick Wintz, and Patrick Irwin, who, having read what is above written, declared that they consent to the change above written and hold themselves liable to the city of New Orleans in the same manner as in the contract between the city of New Orleans and said J. B. Slawson passed before the undersigned notary on the 7th February, 1860.

Done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Laronde D. Jorda and P. Adelarde Fortier, witnesses of lawful age, residing in this

city, who have hereunto signed their names with the said appearers and me, notary, after due reading of the foregoing.

JOHN T. MONROE, *Mayor.*
J. B. SLAWSON.
HENRY HART.
F. WINTZ.
PATRICK IRWIN.
LARONDE D. JORDA.
P. AD. FORTIER.
CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

324 *Change of Contract on Sundry Streets.*

Resolution of the common council of the city of New Orleans (No. 5573).

Resolved, That permission be, and the same is hereby, granted to the City Railroad Company to lay railroad tracks, with the right of way thereon, on three certain streets of the city, and that the contract of said company with the city "for the right of way and laying railroad tracks on certain streets of the city" be so changed and amended by the mayor per notarial act with said company as to include the following, viz:

1st. The right of way and laying a railroad track on Poeyfarre street, first district, from Camp to Magazine streets in lieu of Calliope street, as previously granted, one square.

2d. The right of way and laying a railroad track on Delery street from Dauphin to Rampart street, two squares.

3d. The right of way and laying a railroad track on Poland street from Dauphin to Rampart street, two squares, provided that the tracks to and from Canal street and the Barracks, or lower limit of the city, be completed agreeably to contract before said track shall be allowed to be constructed on said Poland street from Dauphin to Rampart street.

(Signed) J. MAGIONI,
President pro tem. Board of Assistant Aldermen.
(Signed) S. P. DE LABARRE,
President pro tem. Board of Aldermen.

Approved April 11th, 1861.
(Signed) JOHN T. MONROE, *Mayor.*

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this twenty-ninth day of the month of April, in the year of our Lord one thousand eight hundred
325 and sixty-one, before me, Charles Edward Fortier, a notary public in and for the parish of Orleans and city of New Or-

leans and official notary for said city, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the Honorable John T. Monroe, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, president; William P. Sinnott, secretary, of the New Orleans City Railroad Company, and herein acting as aforesaid by virtue of the annexed resolution adopted by the board of directors of said New Orleans City Railroad Company.

And the said John T. Monroe, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 5573, passed by the common council of the city of New Orleans and approved on the eleventh day of the month of April, 1861, a copy whereof is hereto annexed for reference—

He does by these presents consent to change and amend the contract between the city of New Orleans and John B. Slawson, passed before the undersigned notary on the seventh of February, 1860, and also the change in the contract passed between said city of New Orleans and said Slawson the twenty-first of June, 1860, so as to include the following, viz:

1st. The right of way and laying a railroad track on Poeyfarre street, first district, from Camp to Magazine street, in lieu of Calliope street, as previously granted, one square.

2d. The right of way and laying a railroad track on Delery street, from Dauphin to Rampart street, two squares.

3d. The right of way and laying a railroad track on Poland street, from Dauphin to Rampart street, two squares, provided that the track to and from Canal street and the Barracks, or lower limit of the city, be completed agreeably to contract before said track shall be allowed to be constructed on said Poland street from Dauphin to Rampart street.

All of which is accepted by the said John B. Slawson, president, and William P. Sinnott, secretary, as aforesaid.

Done and passed in my office, at the city of New Orleans, the day, month, and year first above written, in presence of Charles C. Laplace and P. Adelard Fortier, witnesses of lawful
326 age, residing in this city, who have hereunto signed their names with the said appearers and me, notary, after due reading of the foregoing.

JOHN T. MONROE, *Mayor.*
J. B. SLAWSON, *President.*
WM. P. SINNOTT, *Secretary.*
P. AD. FORTIER.
CHAS. C. LAPLACE.
CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Dec.* 14, 1861.

Common council of the City of New Orleans—No. 5825.

Resolved, That the second part of the ordinance of the common council, No. 5778, be, and is hereby, amended to read "that the said city railroad be, and they are hereby, authorized to substitute T iron for flat iron rails on Greatman street from Poland street to the Barracks, provided that said company plank the space between the tracks after the manner of construction of their railroad on Magazine street, fourth district, and that said space so planked between the two tracks be kept in good order and repair by said company during the term of their contract, and in other respects said road to be constructed agreeably to contract; and further provided that when said T iron is worn out, or that the street be paved, that said railroad company shall take up said T-iron rails as required in their original contract, and that thus amended said ordinance No. 5778 be, and is hereby, adopted.

(Signed) J. MAGIONI,
President Board of Assistant Aldermen.

(Signed) GERARD STITH,
President pro tem. Board of Aldermen.

Approved December 14th, 1861.

(Signed) JOHN T. MONROE, *Mayor.*

327 Act substituting the New Orleans City Railroad Company to rights of J. B. Slawson and others.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this the fifteenth day of January, in the year of our Lord one thousand eight hundred and sixty-two, before me, Charles Edward Fortier, notary public in and for the parish of Orleans and city of New Orleans and official notary for said city, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the Honorable John T. Monroe, mayor of the city of New Orleans, herein acting in his said capacity, and John B. Slawson, as principal; Henry Hart, Frederick Wintz, and Patrick Irwin, as securities, all of the city of New Orleans.

And the said John T. Monroe, acting as aforesaid, declared that by virtue of the authority in him vested by resolution No. 5861, passed by the common council of the city of New Orleans and approved on the eleventh of January, 1862, a copy whereof is hereto annexed for reference—

He does by these presents consent and agree that the New Orleans City Railroad Company be substituted to all the rights, privileges, and obligations of the said John B. Slawson, as principal; Henry Hart, Frederick Wintz, and Patrick Irwin, as securities, in and to the contracts and changes entered into between the city of

New Orleans, the said John B. Slawson, as principal, and the said Henry Hart, Frederick Wintz, and Patrick Irwin, as securities, as per acts passed before the undersigned notary on the seventh of February, 1860, on the 21st of June, 1860, on the second of July, 1860, and on the 29th of April, 1861.

328 And the said John B. Slawson, as principal; Henry Hart, Frederick Wintz, and Patrick Irwin, as securities, declare that they consent and agree to the substitution of said New Orleans City Railroad Company to all the rights, privileges, and obligations which they have in and to the aforesaid contracts and changes.

Done and passed in my office, at New Orleans, the day, month, and year first above written, in presence of Albert L. Verret and P. Adelarde Fortier, competent witnesses domiciliated in this city, who have hereunto signed their names with said parties and me, notary, after due reading of the foregoing.

JOHN T. MONROE, *Mayor.*
JOHN B. SLAWSON.
HENRY HART.
F. WINTZ.
PATRICK IRWIN.
P. AD. FORTIER.
ALBERT L. VERRET.
CHARLES E. FORTIER,
Notary Public.

(Correct.)
J. J. MICHEL,
City Attorney.

Resolution of the Common Council of the City of New Orleans.

(No. 5861.)

Whereas the New Orleans City Railroad Company, by petition addressed to the common council of the city of New Orleans, ask that an ordinance be passed substituting the said company to all the rights, privileges, and obligations appertaining to and resulting from the contracts entered into between the city of New Orleans and John B. Slawson, as principal, and Henry Hart, Frederick Wintz, and Patrick Irwin, as securities, by act passed before Charles E. Fortier, city notary, on the 7th of February, eighteen hundred and sixty, the said company having, per act passed before Edward Barnett, notary public, on the 18th June, eighteen hundred and sixty, assumed the obligations of the said John B. Slawson, as principal, and said

329 Henry Hart, Frederick Wintz, and Patrick Irwin, as sureties, and in and by said act bound themselves to pay the bonus which the said parties in and by their original contract bound themselves to pay the city of New Orleans for the right of way to certain street railroads therein granted, and in all other respects to comply with the terms of said original contract between said parties and said city of New Orleans;

And whereas it appears that the several contracts entered into by

the said John B. Slawson, Henry Hart, Frederick Wintz, and Patrick Irwin with the city of New Orleans, per several acts passed before said Charles E. Fortier, city notary, on the 21st June, 1860, on the 2d July, 1860, and on the 29th April, 1861, as well as all amendments and changes entered into by said parties and the said city of New Orleans in any way relating to the said city railroads, were for the account of said New Orleans City Railroad Company and included in their rights and obligations and have been assumed by them under the terms of their said charter :

Now, therefore, in order to facilitate the said New Orleans City Railroad Company to carry out their said contracts and to enable them to bind themselves directly to the city of New Orleans in any future changes and modifications of said contracts, and more particularly to enable them to accept the changes granted to lay down T-iron rail from Poland street to the barracks instead of flat-iron rail, as provided in the original contract aforesaid—

Be it resolved, That the said New Orleans City Railroad Company be, and is hereby, substituted in and to all the rights, privileges, and obligations of the said John B. Slawson, as principal, and the said Henry Hart, Frederick Wintz, and Patrick Irwin, as sureties, in and to their contracts aforesaid and any and all changes and modifications thereof.

Resolved further, That the mayor be, and is hereby, authorized to execute before the city notary such acts as may be required to carry out the object hereof.

(Signed) J. MAGIONI,
President Board of Assistant Aldermen.

(Signed) S. P. DE LABARRE,
President Pro Tem. Board of Aldermen.

Approved January 11th, 1862.

(Signed) JOHN T. MONROE, *Mayor.*

330 *Contract, City of New Orleans with New Orleans City Railroad Company, for Right of Way for City Railroad on New Levee Street from Canal to Delery Street.*

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this ninth day of the month of June, in the year of our Lord one thousand eight hundred and sixty-two, before me, Charles Edward Fortier, notary public in and for the parish and city of New Orleans and official notary for said city, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared Acting Brigadier General George F. Shepley, military commandant of the city of New Orleans and acting as the mayor of said city, and John B. Slawson, Esq., president, and William P. Sinnott, secretary, of the New Orleans City Railroad Company and herein acting for said company.

And the said George F. Shepley, acting as aforesaid, declared that

by virtue of the authority in him vested by resolution No. 6053, passed by the common council of the city of New Orleans and approved on the sixth day of June, 1862, a copy whereof is hereto annexed for future reference and in confirmation of the sale and adjudication made by the city comptroller on the twenty-ninth of May, 1862, as it will appear by reference to the procés verbal hereto annexed—

He does by these presents grant, bargain, sell, and confirm unto the said New Orleans City Railroad Company, herein represented by John B. Slawson, its president, and William P. Sinnott, its secretary, the right of way to establish a railroad on New Levee street from Canal street to Delery street.

331 The said John B. Slawson, president, and William P. Sinnott, secretary, as aforesaid, hereby bind the said New Orleans City Railroad Company to perform and execute the said work in accordance with the ordinance No. 6033 of the common council of the city of New Orleans. A copy of said ordinance is hereto annexed for reference, and reads as follows, viz:

An ordinance providing for the sale of the right of way to establish a railroad on New Levee street from Canal street to Delery street, and for other purposes.

Be it ordained, That the comptroller be, and he is hereby, authorized to advertize in the official journal of the city for fifteen days that he will sell at auction to the highest bidder the right of way for twenty years for the construction and working of the following railroads, on the terms and conditions hereinafter set forth, said adjudication to be subject to the approval or rejection of the common council:

SECTION 1. A double-track railroad commencing on the neutral ground on Canal street, at its junction with Magazine and Old Levee streets, up Canal street to New Levee street, down New Levee street to Esplanade street, down the east side of Esplanade to Frenchmen street, down Frenchmen street to Moreau street, down Moreau street to Poland street, up Poland to Levee street, and down Levee to Delery street, at the barracks.

The contractor shall be bound to construct through and in the centre of the above-named streets, within the time specified, double-track railroads. The tracks shall be 5 feet $2\frac{3}{8}$ inches gauge. The rails shall be of the same pattern as those used on the Camp, Magazine, and other city railroads. The material for the construction of the roads shall be of the best quality, and shall have the following dimensions, to wit: The cross-ties shall be of yellow pine six by eight feet long, and the string pieces of yellow pine five by eight inches. The paving of the streets, where the same are already paved, shall be taken up; the streets shall be graded to the grades to be established by the city surveyor, and shall receive a layer of four inches of London gravel, which shall be perfectly well rammed until it forms a hard foundation, and the cross-ties shall then be laid at distances of two feet apart. On the top of the said cross-ties

shall be placed the string pieces, and on the top of said string pieces the iron rails shall be placed. The rails shall not weigh less than forty-five pounds to the yard. The paving of the streets shall then be relaid by the contractor in the best workmanlike manner and to the entire satisfaction of the city surveyor. Wherever the streets are not yet paved the lines of the tracks within the rails shall be paved either with round stones or with four-by-five-inch scantling in the best workmanlike manner, and the space between the lines of tracks and the gutters of the streets shall be planked with yellow-pine planks of three inches thick, laid on strings four inches thick by eight inches wide; the timber used as above mentioned to be of first quality and to the entire satisfaction of the city surveyor.

The cars shall be of the same description as those now used on the other city railroads. They shall be drawn by horses or
332 mules, and if more than one horse or mule be used for each car they shall be driven abreast. The cars shall be run as often per day and night as the contractor may deem proper, but not at greater intervals than every ten minutes from daylight until 10 o'clock p. m., and every thirty minutes from 10 o'clock p. m. until midnight. The speed of the cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good and ample head and rear light, placed in a conspicuous place and position on the outside of the cars, and for the violation of this or any ordinance now existing or that may hereafter be enacted on the part of any officer or employee on said roads the contractor shall be liable to a fine of twenty-five dollars for each and every offense, besides all damages arising therefrom.

The contractor shall be bound to keep in good repair and condition, during the continuance of his privilege, the paved and unpaved streets through which the said tracks pass, as well as the bridges on said streets; and should the contractor refuse or neglect to keep said bridges in good repair and condition the city shall have the right to cause said streets and bridges to be repaired at the expense of said contractor, and in the event of his refusal to pay for the same the amounts shall be recoverable before any court of competent jurisdiction for the benefit of the city.

The said roads shall be commenced within six months after the termination of the war with the United States and shall be completed one year after.

The contractor shall be bound to furnish and place and keep on said roads a sufficient number of passenger cars to be drawn by horses or mules as aforesaid, so as to make trips up and down said roads, as hereinbefore required; and shall also provide for all materials, labor, etc., required for the construction and maintenance of said roads.

The city of New Orleans shall be bound, immediately after the approval of the contract, to institute legal proceedings for the opening of Moreau street from St. Ferdinand to Montegut street, and for the widening of Levee street from Poland street to the lower limits of

the property belonging to the Ursuline nuns, the costs of opening and widening said streets to be paid by the city of New Orleans.

The city of New Orleans shall not be responsible for any work or materials furnished for these roads, and every outlay and expense thereon, either for the construction, repairs, or any other expense of whatever kind, shall be borne by the contractor.

The contractor shall furnish good and solvent security, satisfactory to the common council, in the sum of ten thousand dollars to guarantee the faithful performance of his contract.

The fare between Canal and Delery streets or for any distance between these points shall not exceed five cents either way.

The contractor shall pay annually into the city treasury, upon the assessed value of said roads and fixtures, the annual tax levied upon real estate, and the value of said roads and fixtures shall be assessed by the usual mode of assessment.

The roads shall be constructed under the supervision and
333 to the entire satisfaction of the city surveyor, and in accordance with the lines and grades to be given by said officer.

SEC. 2. It is well understood that in case of failure by the contractor to begin or finish said roads or any part thereof within the period fixed, or in case the common council be dissatisfied with the manner in which the work is being executed, the common council shall have the right to annul the contract without putting the contractor in default, as required by article 1905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity; and it is well understood that in case the contractor shall at any time abandon the work or not finish or complete the same in conformity with the contract the said contractor shall forfeit all claims he may have for any part of the work done by him up to the date of abandonment, and the city shall thereby be discharged and released from any and all liability therefor, and it is also well understood that in case of such abandonment by the contractor or such annulment of the contract by the common council the city of New Orleans shall have the right to resell the contract at the risk and peril of the contractor and his sureties *in solido*.

SEC. 3. The contract shall be awarded to the party offering the largest bonus for the privilege, and the money shall be paid as follows to the city, to wit: One-fifth in cash on signing the contract before the city notary, and the balance at one, two, three, and four years, for notes given by the purchaser and endorsed to the satisfaction of the finance committees, and bearing interest at six per cent. per annum.

SEC. 4. The said railroads, cars, fixtures, and their appurtenances shall revert to the city at the expiration of said twenty years' privilege, on a valuation to be ascertained by two disinterested persons, one to be appointed by the contractor and the other by the city, and in the event of a disagreement as to said valuation between said

persons thus appointed a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final.

(Signed) S. P. DE LABARRE,
President pro tem. Board of Aldermen.

(Signed) J. MAGIONI,
President pro tem. Board of Assistant Aldermen.

Approved May 8th, 1862.

(Signed) JOHN T. MONROE, *Mayor.*

The privilege of the right of way to establish railroads on the above-named streets is granted by the city of New Orleans to said New Orleans City Railroad Company for and in consideration of the price and sum of ninety-six thousand dollars; in part payment and deduction thereof the said J. B. Slawson, president of the New Orleans City Railroad Company, has paid in cash to the said
334 mayor the sum of nineteen thousand two hundred dollars, and for the balance, amounting to seventy-six thousand eight hundred dollars, the said John B. Slawson, president as aforesaid, has furnished four certain promissory notes for nineteen thousand two hundred dollars each, drawn by him, said Slawson, as president of the New Orleans City Railroad Company, and William P. Sinnott, secretary, to the order of and endorsed by Henry Hart, Frederick Wintz, and Patrick Irwin, dated this day, and payable respectively at the Louisiana State Bank, in this city, at one, two, three, and four years from date, with six per cent. interest thereon from date until payment; which notes were signed and paraphed "*ne varietur*" by the undersigned notary to identify them herewith, were handed over to the said mayor, who acknowledges the receipt of the same, as well as of said ready cash, and grants full acquittance and discharge therefor.

It is well understood between said parties that in case of any neglect on the part of the contractor to comply strictly with the above ordinance the council reserves the right to declare the contract *ipso facto* null and void without applying to a court of justice and without indemnifying the contractor; and it is further understood that upon any failure of the contractor to comply strictly with the terms and conditions of his contract he shall be deemed in default by the mere act of his failure.

And now personally came and appeared Messrs. Henry Hart, Frederick Wintz, and Patrick Irwin, all of this city, who, having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said New Orleans City Railroad Company and bind themselves in favor of said city in the sum of ten thousand dollars, payable on demand to said city of New Orleans.

Now, the condition of the above-written bond or obligation is such that if the said New Orleans City Railroad Company shall well, truly, and faithfully perform and execute the present contract in accordance with the above ordinance, then the above-written bond or obligation to be null and void, but otherwise to be and remain in ful.

force and virtue. The said Henry Hart, Frederick Wintz,
335 and Patrick Irwin hereby waive the benefit of division and discussion granted by law to securities.

Done and passed, in my office, at New Orleans, the day, month, and year first above written, in presence of Theodore Marks and Norbert Fortier, competent witnesses, of lawful age, residing in this city, who have hereunto signed their names, together with the said parties and me, notary, after due reading of the whole.

J. B. SLAWSON, *President.*
WM. P. SINNOTT, *Secretary.*
HENRY HART.
F. WINTZ.
PATRICK IRWIN.
THEO. MARKS.
NORBERT FORTIER.
G. F. SHEPLEY,
Military Commandant of New Orleans and Acting Mayor of said City.
CHARLES E. FORTIER,
Notary Public.

HEADQUARTERS MILITARY COMMANDANT OF NEW ORLEANS, CITY HALL, *Sixth Day of June*, 1862.

Resolution of the Common Council of the City of New Orleans (*No.* 6053).

Resolved, That the adjudication by the comptroller, pursuant to ordinance No. 6033, of the "right of way to establish a railroad on New Levee street from Canal street to Delery street, and for other purposes," to the New Orleans City Railroad Company—securities, Messrs. Hart, Wintz, and P. Irwin—for the bonus of ninety-six thousand dollars, be, and the same is hereby, approved, the securities accepted, and the mayor authorized to enter into contract, per act before the city notary, for the faithful performance of the con-
336 tract in conformity with the terms and conditions of the aforesaid ordinance No. 6033, approved May 8th, 1862.

(Signed) J. MAGIONI,
President Board of Assistant Aldermen.
(Signed) GERARD STITH,
President Board of Aldermen.

Approved June 6th, 1862.

GEO. F. SHEPLEY,
Military Commandant of New Orleans.

Ordinance No. 4364, old series.

An ordinance providing for the sale of the right of way to establish railroads in the city of New Orleans, and for other purposes.

SECTION 1. Resolved, That the comptroller be, and he is hereby, requested to advertise in the official journal of the city for sixty days

that sealed proposals will be received by the common council of New Orleans for the right of way for twenty years from persons desirous of entering into an agreement with the city of New Orleans for the purpose of contracting and working the following-described railroads on the terms and conditions hereinafter set forth:

A single-track railroad commencing on Toledano street at its junction with Prytania street; down Prytania and Camp streets; the south side of Canal street to Rampart street, and along the east side of Rampart street to the United States barracks; another single-track railroad commencing at the United States barracks and running along Dauphine, in the third district, to Esplanade; then along the north side of Esplanade to the west side of Rampart and along the west side of Rampart street to Canal street; along the north side of Canal street to Magazine street; through Magazine street to Toledano street, and through the latter street to its junction with Camp street.

SEC. 2. The rails used in the construction of said roads shall be of the same pattern as those in the city of Philadelphia, and the cars of the same description as those used in said city. The tracks in Camp and Magazine streets shall be laid in the centre of said streets, and in Canal and Rampart streets to Esplanade street at the distance of five feet from the neutral ground, and below Esplanade street in the centre of Rampart and Dauphine streets. The lines of said track within the rails shall be paved with round stones except where square-stone pavement exists or may be hereafter made, in which case the same materials shall be used for paving between the rails, and the contractors shall keep the paved and unpaved streets through which said tracks pass in good order and condition during said twenty years' privilege and right of way.

337 SEC. 3. One track shall be used exclusively for cars passing up and the other for cars passing down.

SEC. 4. The fare between Canal street and Toledano street or for any lesser distance between those points shall not exceed five cents per passenger either way. The fare between Canal street and the United States barracks shall not exceed five cents per passenger either way. The cars shall be drawn by horses or mules, and, if more than one horse or mule be used for each car, they shall be driven abreast. Said cars shall be run as often per day or night as the contractor or contractors may deem proper, but not at greater intervals than every ten minutes from daylight until ten o'clock p. m. and every thirty minutes from ten o'clock until midnight.

SEC. 5. Said contractor or contractors shall annually pay into the city treasury upon the assessed value of said road and fixtures the annual tax levied upon real estate, and the value of said road and fixtures to be assessed by the usual mode of assessment. Should the contractor or contractors refuse or neglect to keep the streets in the order and condition contemplated by this resolution the city may cause the said street or streets to be repaired or repaved at the expense of said contractor or contractors, and in the event of their refusal to pay for the same the amount shall be recoverable before any court of competent jurisdiction for the benefit of the city; that

the speed of said cars shall not exceed six miles per hour. All cars that may be run on said railroads between sunset and daybreak shall be provided with a good and ample head and rear light, placed in a conspicuous position on the outside of said cars, and for the violation of this or any other ordinance now existing or that may be hereafter enacted in accordance with the provisions of this resolution on the part of any officer or employee on said roads the contractor or contractors shall be liable to all fines or damages arising therefrom.

SEC. 6. The said road shall be commenced simultaneously at Canal street, working up and down to a completion of the whole work. The grades of the streets and the construction of the said roads shall be under the supervision of the city surveyor, in accordance with lines and levels to be given by him and with specifications on file in his office. The laying of said railroads shall be commenced within six months from date of contract and completed within eighteen months from date of commencement; and should the contractor or contractors fail to comply with these conditions the contract shall be null and void. The said contractor or contractors shall furnish good and solvent security in the sum of ten thousand dollars for the completion of said railroads within the time herein specified.

SEC. 7. The right of way to be awarded to the parties offering the largest bonus for the privilege and the money to be paid within thirty days from the date of contract. All proposals must be directed to the city comptroller and indorsed, the proposals for constructing the city railroads to be opened by the comptroller in the presence of the chairmen of the committees on finance and streets and landings of both boards, and said proposals to be subject to the approval or rejection of the common council.

338 SEC. 8. The city of New Orleans shall not be responsible for any work done or materials furnished for this road, and every outlay and expense thereon, either for the construction or repairs or any other expense, of whatever kind, shall be borne by the contractor or contractors.

(Approved February 11th, 1859.)

Ordinance No. 4474, old series.

SEC. 1. Resolved, That ordinance No. 4364, entitled "An ordinance for the sale of the right of way to establish railroads in the city of New Orleans, and for other purposes," be, and the same is hereby, amended to read, "A single-track railroad commencing on Eighth street" in lieu of "Toledano street," "and along the west side of Rampart street" in lieu of "the east side of Rampart street;" thence along the west side of Rampart street in lieu of "the east side of Rampart street" to the United States barracks; and after the words "another single-track railroad running," etc., insert the words "along the north side of Esplanade street to the east side of Rampart street" in lieu of the "west side," and along the east side of Rampart street to Canal street in lieu of the "west side" of Rampart street; also to insert the words "through Magazine street to

Eighth street" in lieu of "Toledano street," and through said Eighth street to its junction with "Prytania street" in lieu of "Camp street."

SEC. 2. The privileges of the right of way for said contractor or contractors shall be for twenty years, the said railroads, cars, fixtures, and appurtenances to revert to the city at the expiration of said twenty years on a valuation to be ascertained by two disinterested persons, one to be appointed by said contractor or contractors and the other by the city; and, in the event of a disagreement as to said valuation between the said parties thus appointed, a third party or umpire shall be appointed by one of the district courts, the decision had to be final; and, thus amended, the said ordinance to be, and the same is hereby, adopted.

(Approved April 1st, 1859.)

Ordinance No. 4735, old series.

SECTION 1. Resolved, That the first paragraph of ordinance No. 4364, entitled "An ordinance providing for the sale of the right of way to establish railroads in the city of New Orleans, and for other purposes," be amended by striking out all of said paragraph the first after the enacting clause and inserting the words "that the comptroller be, and he is hereby, authorized to adjudicate to the highest bidder, after five days' notice in the official journal, the right of way for twenty years in the city of New Orleans for the purpose of constructing and working the following-described railroads on the terms and conditions hereinafter set forth;" and also further amending the said ordinance No. 4364 by striking out all the words of the paragraph the last but one relative to receiving and opening sealed proposals, and that thus amended said ordinance No. 4364 be, and is hereby, adopted.

SEC. 2. That the comptroller be, and he is hereby, author-
339 ized to adjudicate the aforementioned right of way for the construction and working of said railroads agreeably to ordinance No. 4364, as amended, in conjunction with resolution No. 4474, amendatory of said ordinance No. 4364 and specifications of the surveyor, said adjudication to be subject to the approval or rejection of the common council.

SEC. 3. That the bonus to be paid by the person or persons purchasing the right of way and constructing and working the said city railroads shall be paid as follows to the city, to wit: One-fifth cash on signing the contract before the city notary and the balance at one, two, three, and four years for notes given by the purchaser or purchasers and indorsed to the satisfaction of the finance committee, with interest at six per cent. per annum.

(Approved July 26th, 1859.)

Ordinance No. 4766, old series.

Resolved, That the comptroller be, and he is hereby, instructed, after five days' notice in the official journal of the city, to sell to the highest bidder the bonus for the right of way to establish railroads

in the city of New Orleans agreeably to ordinances Nos. 4364 and 4474, said sale to be subject to the approval of the common council.
(Approved July 30th, 1859.)

Ordinance No. 5119, old series.

Resolved, That the comptroller be, and he is hereby, authorized to adjudicate to the highest bidder, after twenty (20) days' notice in the official journal, a contract for the privilege and right of way for twenty years for running cars on a double-track railroad in the center of Esplanade street from Rampart street to the Bayou St. John bridge in accordance with specifications of the surveyor for the construction of said double-track railroad, style of cars, rates of fare, speed, etc., and the said adjudication to be subject to the approval or rejection of the common council.
(Approved April 28th, 1860.)

Ordinance No. 5122, old series.

Resolved, That the comptroller be, and he is hereby, authorized to adjudicate to the highest bidder, after twenty days' notice in the official journal, a contract for the right of way of a double-track railroad and the privilege of running cars thereon for twenty years on Canal street from Rampart street to the Metairie ridge, thence down said Metairie ridge to the Bayou St. John; all of said construction of tracks, style of cars, rates of fare, speed, etc., to be in accordance with the specifications of the surveyor, and said adjudication to be subject to the approval or rejection of the common council.
(Approved April 28th, 1860.)

340 Ordinance No. 5209, old series.

Resolved, That the mayor be, and he is hereby, authorized to change, per notarial act, the contract of J. B. Slawson, Esq., and his securities with the city of New Orleans "for the right of way for constructing railroads and running cars thereon for twenty years," so as to allow them to lay the rails on the roadway on each side of the neutral ground of Canal street, ten feet from the curbstone lining of said neutral ground: Provided, all of said parties connected with said contract agree to said change and sign accordingly.
(Approved June 7, 1860.)

Ordinance No. 5778, old series.

Resolved, That the New Orleans City Railroad Company be, and is hereby, allowed permission to substitute T iron for the flat iron rails on the Metairie road: Provided, that in three months after the close of the present war said company take up the T rails and put down the flat iron rails agreeably to contract.

That the same privilege granted to the New Orleans City Railroad Company in the first part of this resolution, with the same proviso, be, and the same is hereby, extended to said company for the railroad on Greatmen street from Poland street to the barracks.

That the aforementioned privileges be entered into by the mayor

with the said New Orleans City Railroad Company, per notarial act.

(Approved November 11th, 1861.)

Ordinance No. 6322, old series.

An ordinance to amend the first section of the specifications "for the sale of the right of way to establish a railroad on New Levee street from Canal to Delery street, and for other purposes," as per contract between the city of New Orleans and the New Orleans City Railroad Company, approved May 6, 1862, and the resolution No. 6053, approved June 6, 1862.

SECTION 1. Resolved, That the first section of the specifications "for the sale of the right of way to establish a railroad on New Levee street from Canal to Delery street, and for other purposes," which reads as follows, to wit: "A double-track railroad commencing on the neutral ground on Canal street at its junction with Magazine and Old Levee streets, up Canal street to New Levee street, down New Levee street to Esplanade street, down the east side of Esplanade to Frenchmen street, down Frenchmen street to Moreau street, down Moreau street to Poland street, up Poland street to Levee street, and down Levee to Delery, at the barracks," be, and the same is hereby, amended and changed to read as follows, to wit:

SEC. 2. A double-track railway commencing on the neutral ground on Canal street at its junction with Magazine and Old Levee
341 streets, and thence to extend as follows: The left-hand or down car track to be laid up Canal to New Levee streets, down the left or northwest side of Levee street to Bartholomew street, down the middle of Bartholomew street to a junction with the present track in Dauphine street, down said track in Dauphine street to and across Poland street to a junction with the present right-hand or down track in Dauphine street below Poland street, down the present right-hand track in Dauphine street below Poland to Adams street, up Adams street to Levee street, down Levee street to Delery street, and down Delery street to a junction with the present track on the north side of Dauphine street, at its intersection with Delery street.

SEC. 3. The up car track to commence at Delery street, on Dauphine street, and to extend thence up the north side of Dauphine street, being the same track now laid down thereon, to Poland street; down Poland street to the station house or depot at the corner of Rampart and Poland streets, up Rampart to Mazant street, up Mazant street to Levee street, up Levee street, on the river side thereof, to Canal street, and down Canal street to the neutral ground in front of the custom-house or to Magazine street.

SEC. 4. Nothing in this ordinance shall be so construed as to release the contractor or the New Orleans City Railroad Company from their obligation to run their cars on this whole line from Canal street to Delery street and back to Canal street at intervals not greater than every ten minutes from daylight until ten o'clock p. m., and every thirty minutes from ten o'clock p. m. until midnight, as pro-

vided for in the fifth section of the aforesaid specifications, between Poland street and Delery street, as well as between Poland street (through Mazant and Levee streets) to Canal street.

SEC. 5. The mayor is hereby authorized to change, by notarial act, the contract of the New Orleans City Railroad Company and their securities with the city of New Orleans "for the right of way to establish a railroad on New Levee street from Canal street to Delery street, and for other purposes," according to the provisions of sections two, three, and four of this ordinance: Provided, that the said New Orleans City Railroad Company, the contractor, through their president, accepts the same and joins in said notarial act, and that their security consent to said change and continue to be bound as per original contract.

(Approved August 7th, 1865.)

Ordinance No. 6405, old series.

Resolved, That section 2d of city ordinance No. 6322, approved August 7, 1865, be amended by substituting the words "Caffin's lane" for the words "Adams street" whenever they may occur in said section.

(Adopted January 12, 1866.)

Ordinance No. 67, new series.

Resolved, That sections 2 and 3 of city ordinance No. 6322,
342 approved August 7th, 1865, authorizing "the sale of the right of way on New Levee street and other streets from Canal street to Delery street, and other purposes," be so amended as to read: A double-track railway commencing on New Levee street at the intersection of Canal street, thence down New Levee street to Lafayette avenue, down Lafayette avenue to Chartres street, down Chartres street to Poland street, down Poland street to the present track in Dauphine street, down said track in Dauphine street to Caffin's lane, up Caffin's lane to Levee street, down Levee street to Delery street, down Delery street to Dauphine street, thence up the present track in Dauphine street to Poland street, up Poland street to Royal street, up Royal street to Lafayette avenue, up Lafayette avenue to New Levee street, and up New Levee to the intersection of Canal street.

(Adopted May 9th, 1866.)

Ordinance No. 144, new series.

Resolved, That the mayor be, and he is hereby, requested to advertise according to law that it is the intention of the common council to open Chartres, late Moreau, street, through the Levee steam cotton press, between St. Ferdinand and Montegut streets, and also Royal, late Casacalvo, street, from Louisa to Congress streets.

(Adopted July 6th, 1866.)

Ordinance No. 247, new series.

Resolved, That the mayor be, and he is hereby, authorized and requested to take the necessary legal steps to have opened Chartres (late Moreau) street through the Levee steam cotton press, between St. Ferdinand and Montegut streets, and also Royal (late Casacalvo) street from Louisa to Congress street, under the act of the 3rd of April, 1832, and the act of May 3rd, 1847, providing for the opening, laying out, and improving of streets in the city of New Orleans.
(Approved October 18th, 1866.)

Ordinance No. 490, old series.

Whereas the City Railroad Company entered into contract with the city of New Orleans for the right of way to construct railroads on Levee, Moreau, Casacalvo, and other streets for the sum of $96,000, which was paid to the city, and that the city had bound itself, immediately after the approval of said contract, to cause Moreau and other streets to be widened and opened, to allow said railroads to be built and run; and whereas said streets have not yet been opened:
Resolved, That the contract time of the City Railroad Company with the city of New Orleans shall begin from the date of the opening of Moreau and other streets, as per contract, and also that said railroad company be relieved from keeping in repair said streets and the bridges until such time as the same can be used by said company.
(Approved March 4th, 1867.)

343 Ordinance No. 1425, new series.

Be it resolved, That the mayor be, and he is hereby, authorized to make the following-named changes, per notarial act, in the contract between the city of New Orleans and the City Railroad Company, viz: Of the tracks on Canal street from Claiborne street to their junction at the Metairie ridge, remove the said tracks from over the draining canal and relay said tracks on the north and south sides of said draining canal, and also to remove the timber and other encumbrances now obstructing said draining canal from Claiborne street to Metairie ridge; and, further, that the said City Railroad Company also bind themselves to remove their tracks on Canal street between Bourbon and Royal streets, so as to accommodate the trunk railroad of the Claiborne-Street railroad on the neutral ground; all said changes to be made in accordance with specifications of the city surveyor and under the supervision of said officer: Provided, that in the construction of their said track the railroad company shall not cut down or destroy any of the trees which now line Canal street, nor shall they in any manner infringe on the shell roads which border their present track.
(Approved May 3, 1869.)

Ordinance No. 1506, new series.

Art. 850. Whereas it is impossible for the city, in its present financial embarrassment, to pay enormous prices for the opening of Moreau and Casacalvo streets: Be it

Resolved, That the City Railroad Company be authorized to continue for the present the route of their Barracks railroad with a double track along the levee from Enghien to Montegut street, along Montegut street to Moreau, thence along Moreau to connect with the track on Poland street.

Resolved further, That an extension of five years be granted to that branch of the City Railroad Company known as the Barracks line, running from Canal street to the Barracks, provided they comply with the resolution for changing their route to come upon the main track on Canal street.

(Approved July 24th, 1869.)

344 *Right of Passage.*

Chas. Caffin to New Orleans City Railroad Co.

STATE OF LOUISIANA:

Before me, Joseph Cuvillier, notary public for the parish of Orleans and city of New Orleans, therein residing—

Personally appeared Mr. Charles Caffin, of this city—

Who declared that he doth hereby grant to the City Railroad Company of New Orleans, which is accepted by its president, Mr. Josiah Cole, residing in this city, present, the right of way for the cars of that company through a brick-yard lane on a tract of land belonging to the said Caffin, situated in the third district of this city, fronting on the river at a distance of about three miles from and below the cathedral of St. Louis, which lane leads from Dauphin street, wherein the said railroad runs, to Levee street, where a railroad is to be constructed as the same is represented on the annexed plan, signed *ne varietur* by the parties, witnesses, and me, notary.

It is understood between the parties that the company will enjoy the said right of way as long as its charter lasts, and even during the additional time and extension of its charter, which the company may hereinafter obtain from competent authorities; to have and to hold the said right of way unto the said company up to the last day of its existence.

It is also understood that this right of way is granted to the said company for no other purpose than to allow its cars with passengers and carts with materials belonging to the company to pass in
345 the said lane upon a railroad to be constructed by that company in the said lane, and that this act shall never be interpreted as depriving the said Charles Caffin of the ownership of that lane, which is to be free from that right of way the very moment the said company ceases to exist or be in full operation.

Also that the said right of way is not exclusively granted to the said company. On the contrary, the said Charles Caffin reserves

and will always enjoy the same right for him and for any other persons he may choose to entitle also to that right, and for horses, cattle, carts, and other vehicles, etc., which he may authorize to lead through the said lane, as he will think proper, provided the cars of the said company are not thereby deprived of the said right of way granted by this act.

Thus done and passed in my office on the thirteenth day of December, eighteen hundred and sixty-five, in presence of Joseph Felix Jarreau and Antoine St. Amand, competent witnesses residing in this city, who have signed these presents, together with the parties and I, notary, after a full reading.

Before signing it is agreed that the said company shall keep in running order and in full operation in the lane aforesaid the said railroad during the whole length of their charter, and such as it is required by that charter, unless changed by the city authorities; also that the said track shall be built the same way as those of the company on the unpaved streets in the city, and to remain during the continuance of the charter.

(Original signed) CHAS. CAFFIN.
J. COLE, *President.*
ANTOINE ST. AMAND.
J. FELIX JARREAU.
JOSEPH CUVILLIER,
Notary Public.

A true copy.

JOSEPH CUVILLIER,
Notary Public.

346 *Amendatory Contract with City of New Orleans.*

STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this the tenth day of June, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Hon. Edward Heath, mayor of the city of New Orleans, herein acting in his said capacity, and Frederick Wintz, Esq., herein acting in his capacity of president *pro tem.* of the City Railroad Company.

And the said mayor, acting as aforesaid, declared, by virtue of the authority in him vested by resolution No. 606, new series, passed by the common council of the city of New Orleans and approved on the 5th of June, 1867, a duly certified copy of which resolution is and remains hereunto annexed for reference and is made part hereof, and under the conditions and stipulations hereinafter set forth, he does by these presents grant permission to the City Railroad Company to run a single-track, railroad on Dauphin street (formerly called Greatmen street) from Caffin's lane to Delery street in lieu of

the double track, being amending ordinance No. 5573 of the common council, approved April 11th, 1861.

In consideration of said resolution No. 606, new series, and of said amendment, etc., the said F. Wintz, acting as aforesaid, hereby obligates the said City Railroad Company immediately after the signing hereof to put into active operation the line of road through
347 Caffin's lane, along the levee to Delery street, thence to Dauphin street, and along Dauphin street to Poland street—

It being well understood and provided between all the contracting parties that this dispensation (or amendment of ordinance) shall not be so constructed as to effect in any manner the obligations of the said railroad company toward the city or the public.

United States internal revenue stamp for five cents is affixed hereto, duly cancelled at the execution hereof.

Thus done and passed, in my office, at New Orleans, aforesaid, the day, month, and year first above written, in the presence of Michael L. Luther and Charles E. Lenes, witnesses of lawful age, domicilated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed.) E. HEATH, *Mayor.*
F. WINTZ,
President pro tem.
CHAS. E. LENES.
MICHAEL L. LUTHER.

W. J. CASTELL,
Notary Public.

Approved.
H. G. OGDEN,
City Attorney.

A true copy.
New Orleans, June 14th, 1867.

W. J. CASTELL,
Notary Public.

Ordinance No. 606, new series.

Resolved, That ordinance No. 5573 of the common council, approved April 11, 1861, which reads as follows, to wit:

"That permission be, and the same is hereby, granted to J. B. Slawson, president of the City Railroad Company, to lay a double track for the city road on Greatmen street from Poland to the Barracks, and to dispense with the track on Love street from Poland street down to the terminus of the road"

Be so amended as to read:

Resolved, That permission be, and the same is hereby, granted to the City Railroad Company to run a single-track railroad on Dauphine street (formerly called Greatmen street) from Caffin's lane to Delery street in lieu of the double track: Provided, that the said railroad company, by act before the city notary, accepts this change

within ten days after the approval of this ordinance and
348 obligates itself immediately thereafter to put into active operation the line of road through Caffin's lane, along the levee to Delery street, thence to Dauphine street, and along Dauphine street to Poland street:

And provided further, that this dispensation shall not be so construed as to affect in any manner the obligations of the said railroad company toward the city or the public.

(Approved June 5th, 1868.)

Grant from City of New Orleans.

STATE OF LOUISIANA, }
Parish and City of New Orleans. }

Be it known that on this seventh day of March, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States of America the ninety-eighth, before me, Andrew Hero, Jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Hon. Louis A. Wiltz, mayor of the city of New Orleans, and herein acting in his said capacity and for and on behalf of said city of New Orleans, under and by virtue of resolution No. 2518, administration series, adopted by the council of the city of New Orleans at its session of the third day of March inst., a certified copy of which said resolution is hereto annexed for reference;

And also Frederick Wintz, the president, and Curtis C. Lewis, secretary, of the New Orleans City Railroad Company, a duly incorporated institution of this State, domiciled in this city, instituted by virtue of an act passed before Edward Barnett, a notary in
349 this city, on the 15th day of June, A. D. eighteen hundred and sixty, and herein acting in their said several capacities and for and on behalf of said railroad company under and by virtue of authority in them vested by the board of directors thereof under the annexed resolution;

And said Mayor Wiltz declared, in his said capacity and for and on behalf of said city of New Orleans, that, by virtue of the provisions of the aforesaid resolution, No. 2518, administration series, and in consideration of the payment, this day made by said New Orleans City Railroad Company, of the sum of one thousand dollars into the city treasury, as appears by the annexed receipt of the administrator of finance of said city of New Orleans, he does by these presents give, grant, and confirm unto the New Orleans City Railroad Company the right and privilege of constructing, using, and maintaining a double-track railroad on Esplanade street from Rampart street to Peters or Levee street, in the third district of this city, for the purpose of connecting the Esplanade and Bayou road line of said company with its Levee and Barracks line for the full term and period commencing on and to be computed from and after the

day and date hereof and terminating at the expiration of the aforesaid charter of said New Orleans City Railroad Company passed before the said late notary, Edward Barnett.

Said Messrs. Wintz and Lewis, in their said several capacities and for and on behalf of said New Orleans City Railroad Company, hereby formally accept the privilege and franchise hereby granted and, moreover, bind and obligate the said New Orleans City Railroad Company to construct, equip, manage, and regulate the herein specified and granted street railroad in accordance with and subject to all the terms, provisions, and stipulations of the several contracts regulating and governing the above-mentioned Esplanade Street and Bayou road and Levee and Barracks line of cars, and to construct or lay the herein-granted railroad tracks in accordance with specifications to be furnished by the city surveyor.

And it is understood and agreed to by and between the parties hereto that all the terms, penalties, conditions, and stipulations contained or embodied in the several contracts entered into between the city of New Orleans and the said New Orleans City Rail-
350 road Company in reference to the tracks, cars, equipments, management, and regulations of the Esplanade Street and Bayou Road and Levee and Barracks lines of railroads shall apply to and govern the herein-granted franchise in the same manner and with the same effect as if each and every article thereof had been herein written and detailed.

Thus done and passed, in my office, at New Orleans aforesaid, in the presence of George Cenas and Paul A. Conand, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Signed) F. WINTZ, *President.*
C. C. LEWIS, *Secretary.*
LOUIS A. WILTZ, *Mayor.*

GEO. CENAS.
P. A. CONAND.
ANDREW HERO, JR.,
Notary Public.

A true copy of the original act on file and of record in my office. New Orleans, March 11, 1874.

ANDREW HERO, JR.,
Notary Public.

Contract with St. Charles Street Railroad Co.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this twenty-third day of May, in the year of our Lord one thousand eight hundred and seventy-four,
351 and of the Independence of the United States of America the ninety-eighth, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly

commissioned and qualified and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Frederick Wintz, Esq., herein acting in his quality of president of the New Orleans City Railroad Company, a duly incorporated association of this city and herein acting under and by virtue of a resolution of the board of directors of said company, adopted at their sitting of the fourteenth day of March, 1874, a duly certified copy of which resolution is hereunto annexed for reference and made part hereof, of the first part, and Alden McLellan, Esq., herein acting in his quality of president of the St. Charles Street Railroad Company, a duly incorporated association, also of this city, and herein acting under and by virtue of a resolution of the board of directors of said company, adopted at their sitting of the eleventh day of April, 1874, a duly certified copy of which resolution is also hereunto annexed for reference and made part hereof, of the second part, which appearers declared that, acting in their aforesaid capacities and for and on behalf of their respective corporations, they have made and entered into and do by these presents make and enter into the following contract of agreement, to wit:

First. That the said New Orleans City Railroad Company, party of the first part, shall, for the purposes of running a portion of their cars of their Bayou Bridge and Levee line, use the tracks and roadbed of the railroad on Esplanade street between Bourbon and Victory streets, constructed by and belonging to the St. Charles Street Railroad Company, party of the second part.

Second. That the said New Orleans City Railroad Company shall pay to the St. Charles Street Railroad Company four (4) cents per mile for each and every mule traveled by each and every car belonging to or run by said New Orleans City Railroad Company on said railroad on Esplanade street, between Bourbon and Victory streets, belonging to said St. Charles Street Railroad Company.

Third. That said New Orleans City Railroad Company shall make monthly returns, certified to by their president and secretary,
352 to the said St. Charles Street Railroad Company of the number of cars run and distance traveled over said railroad on Esplanade street, between Bourbon and Victory streets, from which returns settlements shall be made in lawful currency.

Fourth. That the New Orleans City Railroad Company shall put in and keep in good order, during the time they use the said railroad, all necessary inlets, outlets, switches, &c., that may be requisite to connect the tracks; also put in good order and condition such portions of said railroad that may be disturbed in making said connections.

Fifth. That the said New Orleans City Railroad Company shall furnish and pay for all switch-tending and other labor that may be necessary in running their cars on, over, and off the said railroad without interruption to or hindrance of the usual free passage of the cars belonging to the said St. Charles Street Railroad Company.

Sixth. That the said St. Charles Street Railroad Company shall keep said railroad as it now exists on Esplanade street, between Bourbon and Victory streets, in good order and repair.

Seventh. That said St. Charles Street Railroad Company shall not be responsible for any accidents to persons or damages to property arising from the carelessness or negligence of the employees of the said New Orleans City Railroad Company while running their cars on said railroad on Esplanade street, between Bourbon and Victory streets, it being well understood and agreed that the said St. Charles Street Railroad Company shall be responsible and accountable only for such accidents and damages which may be caused by the dilapidated or bad condition of said railroad on Esplanade street belonging to said St. Charles Street Railroad Company.

Eighth. That nothing in this contract of agreement shall be construed as preventing or to prevent said St. Charles Street Railroad Company from negotiating with other parties or companies for running their cars on said railroad on Esplanade street between Bourbon and Victory streets, provided the same shall not interfere with the rights of said New Orleans City Railroad Company and with the free passage and travel of their cars under this agreement.

Ninth. That this agreement shall be annulled and cancelled by said St. Charles Street Railroad Company at its option on giving said New Orleans City Railroad Company a written notice to that effect.

353 Tenth. That the New Orleans City Railroad Company shall, within eight months after being notified in accordance with article ninth of this agreement, cease to use said railroad on Esplanade street between Bourbon and Victory streets, belonging to said St. Charles Street Railroad Company, but shall pay for the use of the same in accordance with the terms of this agreement up to the time when they actually cease running their cars over said railroad.

Eleventh. That in case the said New Orleans City Railroad Company should cease to use said railroad in accordance with articles ninth and tenth of this agreement or otherwise, the said New Orleans City Railroad Company shall put in good order and condition the tracks, road-bed, &c., of said railroad on Esplanade street belonging to said St. Charles Street Railroad Company; also remove all switches, inlets, &c., which may have been put on said tracks, restoring the same in all respects to the condition to which said railroad was before connecting the tracks.

Thus done and passed, in my office, at New Orleans aforesaid, the day, month, and year first above written, in presence of James J. Woulfe and Harris Murphy, witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed) F. WINTZ, *President.*
ALDEN McLELLAN, *President.*
JAMES J. WOULFE.
HARRIS MURPHY.
W. J. CASTELL, *Notary Public.*

I hereby certify the above and foregoing to be a true copy of the original act, extant in my current register. In faith whereof I grant

these presents under my signature and the impress of my seal of office.

New Orleans, June 8th, 1874.

W. J. CASTELL,
Notary Public.

354 *Ordinances and Contracts Relating to Lake Railroad.*

Ordinance No. 3565, administration series.

Resolved, That permission be, and is hereby, granted to the New Orleans City Railroad Company to run steam dummies from the depot on Canal street, between White and Dupre streets, to the end of the road at the lake, this permission to be revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans June 13th, 1876.

Ordinance No. 3617, administration series.

Resolved, That permission be, and is hereby, granted to the New Orleans City Railroad Company to establish a stand for the Lake cars on the Neutral ground on Canal street between Baronne and Carondelet streets, provided such stand will not in any way impede either street or crossing. This permission revocable at the pleasure of the council.

Adopted by the council of the city of New Orleans August 22nd, 1876.

Ordinance No. 6316, administration series.

SECTION 1. Be it ordained by the council of the city of New Orleans, That the New Orleans City Railroad Company shall have and enjoy the right of the exclusive use of the lake front of the revetment levee, situated between the end of the new canal and the bridge of the Upper Line canal, for the period of twenty-five years, upon the terms and conditions herein set forth.

SEC. 2. That said company shall bind itself to keep said revetment levee in good condition and repair, plant trees upon and embellish the neutral ground in the centre of same with flowers and shrubbery, shell and make a good walk ten feet wide on the lake front on said revetment levee, shell the space inside of said neutral ground and keep the same in good order for a public drive, and also keep the abutment, as per specification on file in the office of the city surveyor, in good repair and order, build a hotel with restaurant and a pavilion over the waters of Lake Pontchartrain in front of said revetment levee in accordance with plans and specifications to be adopted by the council, employ at least three policemen during six months in the year and one during the remaining
355 six months at its own expense, who shall be commissioned by the mayor and be under the supervision of the officer commanding the suburban police precinct.

SEC. 3. That said company shall have no right whatever on the

inside of said revetment levee, except to so much of the space thereof which may be necessary to preserve a full and open view of its hotel and pavilion, which is hereby reserved, and the right to which is also granted to said company for said purpose only during the term of this privilege.

SEC. 4. That for the proper enforcement of and to carry into effect the provisions of this ordinance all privileges heretofore granted to any person or persons to erect booths, buildings, or other structures on the lake front of said revetment or over the waters of Lake Pontchartrain in front thereof are hereby withdrawn and repealed, as per ordinance No. 3913, and that said company, after notifying said person or persons owning or occupying the same to remove or cause to be removed the same within the period of sixty days from the service of said notice, shall have the right to remove or cause to be removed said booths, buildings, or other structures at its own expense, should said person or persons refuse, neglect, or otherwise fail to comply with said notice.

SEC. 5. That said company binds itself to keep all of the improvements herein mentioned upon said revetment levee and over the waters of Lake Pontchartrain in front of same in good order and condition during the term of this privilege, and at the expiration of same all of the improvements erected on said revetment levee shall revert to the city of New Orleans without cost or expense.

SEC. 6. That this ordinance shall take effect from and after its passage, and that all ordinances or resolutions or parts of ordinances or resolutions contrary to or in anywise conflicting with the provisions of this ordinance be, and the same are hereby, repealed.

Adopted by the council of the city of New Orleans January 27th, 1880.

Ordinance No. 6528, administration series.

Whereas numerous, serious, and fatal accidents have happened to passengers on the New Orleans City railroad, running from the intersection of Canal and Carondelet streets to Lake Ponchartrain, and on the Spanish Fort and Lake railroad, running from the intersection of Basin and Canal streets to Lake Pontchartrain; and

Whereas complaints have been made to the council of the city of New Orleans and publicly expressed against the dangerous manner in which the trains of said railroads on Sundays and excursion days are overcrowded with passengers, who stand upon the platforms and in the isles of the cars, to the great inconvenience and peril of all persons on board; and

Whereas such accidents can be guarded against and avoided by restraining the companies of said railroads from taking more
356 passengers for each car than there are seats and compelling them to provide a conductor on Sundays and excursion days for every two passenger cars attached to a dummy engine:

Be it resolved, That from and after the passage of this ordinance the New Orleans City Railroad and the Spanish Fort and Lake Railroad Companies be required on Sundays and excursion days to

have at least one conductor for every two cars attached to the dummy engine, whose duty it shall be to prevent any of the passengers from standing on the platform of any of the cars while in motion; that for each and every violation of this section by either company said company so offending shall be fined in a sum not to exceed $25.00, recoverable before any court of competent jurisdiction.

Be it resolved, That ordinance No. 3617, A. S., adopted August 22nd, 1876, granting permission to the New Orleans City Railroad Company to establish a stand for the Lake cars on the neutral ground on Canal street between Baronne and Carondelet streets be, and is hereby, revoked.

Be it further resolved, That permission be, and is hereby, granted to the New Orleans City Railroad Company to establish a stand for their steam trains on the neutral ground on Basin street between Canal and Common streets at such point as may be designated by the administrators of commerce and improvements and the city surveyor.

Be it further resolved, That the New Orleans City Railroad Company be, and is hereby, authorized to erect a depot at the point above designated and to construct such tracks, switches, and turn-tables as may be necessary: Provided, that the plans and specifications of the above-enumerated work be approved by the administrators of commerce and improvements and the city surveyor.

Be it further resolved, That in the event of the non-acceptance by the New Orleans City Railroad Company of the permission to establish a stand on the neutral ground on Basin street, then permission is hereby given to said company to run their steam trains to the wood side of Basin street on Canal street.

Be it further resolved, That this ordinance shall go into effect and have full force on and after the fifteenth day of July, 1880, and that there shall be imposed a fine of ($25) twenty-five dollars, collectible before any court of competent jurisdiction, for each and every day the said company shall run their trains in contravention of the provisions of this ordinance.

Be it further resolved, That all ordinances or parts of ordinances in conflict with the provisions of this ordinance be, and are hereby, repealed.

Adopted by the council of the city of New Orleans June 15th, 1880.

Ordinance No. 6570, administration series.

Be it resolved, That the last section of ordinance No. 6528, A. S., which reads, "That this ordinance shall go into effect and have full force on and after the fifteenth day of July, 1880," be amended and the time extended to the first day of October, 1880.

(Adopted July 13th, 1880.)

357 Ordinance No. 6731, administration series.

Whereas the New Orleans City Railroad Company, owner of the Canal Street and Lake railroad, has signified its acceptance and de-

sires to avail itself of the provisions of ordinance No. 6528, administration series: Therefore be it

Resolved by the common council of the city of New Orleans, That permission be granted it to extend its tracks up and over Canal street and on the neutral ground on Basin street, as per paragraphs Nos. 5, 6, and 7 of said ordinance, and to erect its depot: Provided, that the said company obligates and binds itself to station a flagman on the curve from the neutral ground on Canal street to Basin street: Provided further, that the said company binds itself to repair and to keep in good order and repair from gutter to gutter, including the neutral ground, all the bridges over the drainage canals on Canal street from the Metairie ridge to Basin street: Provided further, that the said company, through its proper officers, accepts and agrees to the provisions of this ordinance within five days from the date of its promulgation.

(Approved November, 1880.)

Lease of Portion of Greenwood Cemetery from Firemen's Charitable Association.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this the eighth day of the month of February, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundredth, before me, William Bernard Kleinpeter, a notary public, duly commissioned and qualified, in and for the city of New Orleans and parish of Orleans, in the State of Louisiana, domiciliated in the said city of New Orleans, and in the presence of
358 the witnesses hereinafter named and undersigned, personally appeared Isaac Newton Marks, the president of the Firemen's Charitable Association of New Orleans, and John Fitzpatrick, the chairman of the committee on cemeteries of the said association, and Hubert Wax and Frank Keehn, members of the said committee, all herein appearing for and in behalf of the said association, and in that behalf all parties hereto of the first part, and Frederick Wintz, the president of the New Orleans City Railroad Company, and Patrick Irwin, James Jackson, and Bennet Biscoe, members of the board of directors of the said company, and in said behalf parties hereto of the second part, all of which said appearers of the first and second parts, acting in their several respective official capacities, declared that whereas, by virtue of a resolution adopted at a meeting of the board of directors of the said New Orleans City Railroad Company held January 12th, 1876, the said appearers, Frederick Wintz, president; Patrick Irwin, James Jackson, and Bennet Biscoe, of the board of directors of the said company, were appointed a "committee" on behalf of the said company, with full power to act, "to negotiate with the Firemen's Charitable Association of New Orleans for the privilege of running a double-track railroad through that portion of Greenwood cemetery contiguous to the new canal," all

as evidenced by a duly certified copy of the said resolution, hereto annexed for reference; and, whereas, responsive to a petition of the said New Orleans City Railroad Company presented to the Firemen's Charitable Association of New Orleans, with a view towards and inceptive of the said negotiation, and read at a meeting of the board of delegates of the said association held January 10th, 1876, "the subject," by resolution adopted, "was referred to the president and cemetery committee of said association, with full power to act," all as shown by a duly certified copy of the resolution, hereto annexed; and whereas, upon joint conference held between the said appearers of the first and second parts on the subject-matter of the said negotiation, it has been agreed to on the part of the said appearers of the first part, representing the said Firemen's Charitable Association of New Orleans, and the same has been duly accepted by the said appearers of the second part, for and in behalf of the said New Orleans City Railroad Company, to lease to the said company to its use and behoof for right of way and
359 for constructing, maintaining, and running a double-track railroad on its proposed new railroad route to the Lake Pontchartrain a certain portion of the said Greenwood cemetery contiguous to the said new canal for such space of time and upon such terms and conditions, all as hereinafter expressed and set forth: Wherefore, the premises considered, in order to carry out said contract of lease and to put the same in authentic form, the said Isaac N. Marks, in his official capacity as president of the said Firemen's Charitable Association of New Orleans, and John Fitzpatrick, in his official capacity as chairman of the committee on cemeteries of said association, and Hubert Wax and Frank Keehn, in their official capacities as members of said committee, all parties hereto of the first part, further declared that, acting for and in behalf of the said Firemen's Charitable Association of New Orleans by virtue of their official and the special powers conferred upon them under the resolution aforesaid, they do by these presents let and lease for and during the space and term of twenty-five (25) years, commencing and beginning retroactively on the first day of January, in the year of our Lord one thousand eight hundred and seventy-six (1876), and terminating on the thirty-first day of December, in the year of our Lord one thousand nine hundred and one (1901)—

Unto the said New Orleans City Railroad Company, here present and represented by and through its president, the said Frederick Wintz, and the said Patrick Irwin, James Jackson, and Bennet Biscoe, of its board of directors, the committee aforesaid, the parties hereto of the second part, who, acting in their official capacities and therein duly empowered under the resolution aforesaid, accept the same for the benefit, use, and behoof of the said company, all as hereinafter set forth, the following-described property, to wit:

1°. All and singular that certain portion of Greenwood cemetery belonging to the said association, together with all the rights, ways, privileges, servitudes, and appurtenances thereunto appertaining, contiguous to the new canal, measuring thirty feet front on Metairie road by the full depth of the said cemetery between rectilinear and

parallel lines, fourteen hundred and twenty feet and six inches (1,420′ 6″) more or less, the said portion of ground being
360 the west longitudinal half of that certain sixty (60′) feet of land acquitted by the said Firemen's Charitable Association of New Orleans, the lessor herein, by donation from the State of Louisiana under and by virtue of an act of the General Assembly of said State approved February 10th, 1866, and is designated by the letters "E," "E," "E" on a certain sketch or plan drawn by J. A. d'Hemecourt, surveyor, dated January 26th, 1876, hereto annexed for reference.

2°. All and singular that certain triangular portion of the said Greenwood cemetery formed by the intersection of the line of the said cemetery fronting on the said Metaire road with the line dividing the said cemetery from the portion of ground above first described sufficient to enable the said New Orleans City Railroad Company to locate, construct, and operate curves for a double railroad track with a radius of the inner curve not to exceed one hundred feet, the said portion of ground being indicated by the letters "A," "F," "G" on the annexed sketch. This lease is made and accepted for the said term of twenty-five years, as above set forth, for and in consideration *for* the price and sum of seven thousand five hundred dollars ($7,500), being at an annual rental of three hundred dollars ($300), the payment of which is to be paid in semi-annual installments of one hundred and fifty dollars ($150), payable respectively on the first days of January and July of each year during the continuance of said lease; and, as further condition of this contract, it is stipulated and agreed to by and between the said appearers, 1°, that the said New Orleans City Railroad Company shall, at its own cost and expense, remove all fences, walls, and structures, of whatsoever nature or kind they may be, now on the property herein leased, and that all materials composing the fences, walls, and structures shall belong to the said Firemen's Charitable Association of New Orleans; 2°, that the said New Orleans City Railroad Company shall, at its own cost and expense and without further delay, erect, build, and construct on such line or lines as the said Firemen's Charitable Association, through its representatives herein, shall designate a paling fence of good, new, and sound cypress wood or other approved material on that side of the Greenwood cem-
361 etery contiguous to the property herein leased, together with all gates, openings, and landings complete.

3°. That under the lease herein granted the said New Orleans City Railroad Company shall have and enjoy the right of way, with all privileges thereto appertaining, over the said grounds of the said Firemen's Charitable Association herein leased, without hindrance or obstruction on the part of the said association, with full power to construct and maintain thereon during said full term any such railway or railroad as the said company may elect: Provided always, that said company shall construct and maintain said road in strict accordance with all conditions of the charter thereof and with all State laws and city ordinances governing the same; and, 4°, that both

parties hereto shall carry out fully, fairly, and in good faith all conditions of this contract.

This done and passed, at my notarial office, in the said city of New Orleans, in the presence of Frederick Zengle and Jas. B. Dunn, competent witnesses, of lawful age, and domiciliated in this city, who sign these presents with said appearers and me, notary, on the day and date aforesaid.

(Original signed)

I. N. MARKS.
JOHN FITZPATRICK.
H. WAX.
FRANK KEEHN.
FRED. ZENGLE.
F. WINTZ, *President.*
P. IRWIN,
JAMES JACKSON,
B. BISCOE,
JAMES B. DUNN, *Directors.*
W. B. KLEINPETER,
Notary Public.

A true copy.
New Orleans, February 8th, 1876.

W. B. KLEINPETER,
Notary Public.

362 *Agreement with City of New Orleans.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this first day of the month of July, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second, before me, Gustave Le Gardeaur, Jr., a notary public, duly commissioned and sworn, in and for the parish and city aforesaid, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the Hon. Edward Pilsbury, mayor of the city of New Orleans, herein duly authorized in the full execution of these presents, under and by virtue of resolution No. 4566, administration series, adopted by the city council June 20th, 1878, a certified copy whereof is hereto annexed for reference.

And also came and appeared Frederick Wintz, of this city, herein acting as president of the New Orleans City Railroad Company, by virtue of a resolution adopted by the board of directors of the said company on the first day of July, 1878, a certified copy whereof is hereto annexed for reference, which said appearers, in their respective capacity and herein duly authorized as aforesaid, declared that they have covenanted and agreed, and do by these presents covenant and agree and bind the said city of New Orleans and the said railroad company, the one unto the other, as follows, to wit:

1°. The said New Orleans City Railroad Company, through its

president aforesaid, does hereby agree and bind itself to reduce the fare on said road to fifteen cents for the round trip
363 from its station at Canal street at the intersection of Carondelet and Bourbon streets to the New Lake and return from and after the date hereof.

2°. The said railroad company, through its president aforesaid, hereby binds itself to cause to be built, at its own expense, a number of sheds on the levee at the New Lake end for the convenience of visitors; the number and character of the sheds to be determined hereafter.

3°. The said railroad company, through its president aforesaid, does, moreover, by these presents bind itself to advance the necessary money to repair the revetment levee at said New Lake end.

And now, for the reimbursement to the said railroad company of the sum of money so to be advanced by the said company for repairing the said levee, it is well understood and agreed by and between the said parties hereto that the same shall be payable in two equal installments, on the first day of March in 1879 and 1880, without interest, and the said Mayor Pilsbury declared that, by virtue of the power in him vested by said resolution No. 4566, administration series, he does by these presents bind the city of New Orleans to issue and deliver to said company for each installment of the indebtedness which it, the city, may incur as aforesaid to said company receipts duly acquitted and receipted for an equal amount of municipal licenses due and owing by the said company to the city and taxes imposed for general purposes for the years in which said installments shall mature, it being the true intendment and meaning of the said resolution No. 4566, administration series, and of these presents that, in consideration of the other obligations herein assumed by the said New Orleans Railroad Company and of the advances to be made by the said company of the funds necessary to repair the revetment levee as hereinbefore set forth, the said company is to be relieved, freed, and exempted from the payment to the city of New Orleans of the taxes and licenses which otherwise would become due and owing by it to the city in the years 1879 and 1880 to the extent of the amount advanced by the said company.

Thus done and passed in New Orleans, at my office, the day, month, and year first above written, in the presence of Armand
364 Pitot, Jr., and Gustave M. Letellier, competent witnesses, who have signed with the said parties and me, notary, after reading the whole.

(Original signed)

E. PILSBURY, *Mayor.*
F. WINTZ, *President.*
A. PITOT, JR.
G. M. LETELLIER.
G. LE GARDEUR, JR.,
Notary Public.

A true copy of the original on file and of record in my office.
New Orleans, April 10th, 1879.

G. LE GARDEUR, JR.,
Notary Public.

28—1314

Ordinance No. 4566, administration series.

Resolved, That the mayor be, and is hereby, authorized to enter into a contract with the New Orleans City Railroad Company whereby said company shall agree to reduce the fare on said road to fifteen (15) cents for the round trip from the station at Canal street to the New Lake and return, and shall, at its own expense, cause a number of sheds to be built on the levee at the New Lake end for the convenience of visitors, the number and character of the sheds to be determined hereafter, and whereby said company shall engage to advance the necessary money to repair the revetment levee at said New Lake end; and for the reimbursement to said company of the said sum of money so to be advanced for repairing said levee it shall be stipulated and agreed that the same shall be payable in two equal installments, on the first day of March in 1879 and 1880, without interest, and that the city of New Orleans shall receive from said company for each installment of the indebtedness it may incur as aforesaid to said company an equal amount of municipal licenses due and owing by the company to the city and taxes imposed for general purposes for the years in which said installments shall mature.

(Approved June 20th, 1878.)

Ordinance No. 5891, administration series.

Resolved, That the section of ordinance 6528, adopted June 15, 1880, revoking the privilege granting the New Orleans City Railroad Company permission to extend their tracks on the neutral ground on Canal street to Carondelet street be, and is hereby, repealed: Provided, said company shall remove their switch or switches now on Canal street between Dryades and Baronne streets and place the same at the intersection of Basin street in the block between
365 Franklin and Basin streets, and shall lay a single track in the centre of said neutral ground from Basin street to connect that part of the track corner of Canal and Baronne streets: Provided, the plans and specifications of the above-enumerated work be approved by the administrators of commerce and improvements and the city surveyor; these privileges to remain during the pleasure of the council.

Be it further resolved, That all ordinances or parts of ordinances in conflict with the provisions of the foregoing be, and are hereby, repealed.

(Approved March, 1881.)

Articles of Consolidation with the New Orleans, Metairie and Lake Railroad Company.

An agreement to consolidate the New Orleans City Railroad Company and the New Orleans, Metairie and Lake Railroad Company by virtue of act No. 157 of the General Assembly of the State of Louisiana, approved December 12th, 1874.

The president and board of directors of the New Orleans City

Railroad Company and the president and board of directors of the New Orleans, Metairie and Lake Railroad Company, availing themselves of the provisions of an act of the General Assembly, No. 157, approved December 12th, 1874, entitled "An act to authorize the consolidation of business or manufacturing corporations or companies," do hereby, on this twenty-first day of December, 1875, enter into the following agreement of union, amalgamation, and consolidation, which is to become final and binding whenever the same shall receive the assent of the owners of three-fifths of the capital stock of each of said corporations.

Article 1. The objects and business of the two companies being of the same nature, the amalgamated companies shall form one consolidated company under the name and style of the "New Orleans City Railroad Company."

366 Art. 2. The capital stock is hereby fixed at $2,000,000 (two millions of dollars), of which the sum of one million three hundred thousand dollars ($1,300,000) has been already issued and is full paid and is in the possession of and owned by the present stockholders of the New Orleans City Railroad Company, and it is hereby agreed that an additional one thousand shares shall be issued of one hundred dollars each, of which number eighty shares shall be considered and is hereby declared full-paid stock, and the remaining shares, to wit, nine hundred and twenty, shall be subscribed for hereafter, at such time and on such conditions and terms as the directors shall determine.

Art. 3. The entire stock of the New Orleans, Metairie and Lake Railroad Company issued to this date is eleven hundred and thirty-nine shares of one hundred dollars each, of which six hundred and forty are full paid, the remaining four hundred and ninety-nine (499) being unpaid to this date; that the subscribers of said unpaid stock at the time of subscription gave, instead of money, therefor their notes for five per cent. of the same, payable only when two thousand shares should be subscribed; that of this four hundred and ninety-nine shares the subscribers of three hundred and thirty-one shares have transferred the same to Edward S. Wurzburger and received therefor their notes given as aforesaid. All certificates for stock issued by said New Orleans, Metairie and Lake Railroad Company are hereby annulled and cancelled and considered of no legal effect or in any manner binding on the consolidated company; to which company the cancelled certificates, together with the archives, books, property, rights, powers, and franchises granted and held by them by virtue of their charter granted by the Legislature of Louisiana by act No. 133 and approved April 20th, 1869, are deemed and considered transferred and conveyed and surrendered to the consolidated company upon the ratification of this agreement; and in lieu thereof there shall be issued to the stockholders of the New Orleans, Metairie and Lake Railroad Company certificates for eighty shares of full-paid stock of the consolidated company (the said eighty shares being the same as named and described in article second of this agreement), and the said eighty shares shall be

deemed and considered full payment and satisfaction for
367 all the rights, property, and franchises of the said New Orleans, Metairie and Lake Railroad Company.

Art. 4. The officers, clerks, servants, and employees of the present New Orleans City Railroad Company shall become *ipso facto* the officers, clerks, employees, and servants of the consolidated company in their respective positions, salaries, and terms of office as hitherto established; and in like manner the directors of the present New Orleans City Railroad Company shall be and continue during their time the directors of the consolidated company.

Art. 5. The charter and by-laws of the present New Orleans City Railroad Company, in so far as not altered by this agreement, shall continue and remain in full force and effect.

Art. 6. The board of directors of the consolidated company are authorized to carry out the details of this consolidation and to regulate all matters for this purpose not especially provided for in this agreement.

Art. 7. The holders of the said eighty shares of stock shall not be entitled to the dividend of the New Orleans City Railroad Company already declared and payable on the first day of January, 1876. Edward S. Wurzburger, having become the holder for himself and others of the six hundred and forty shares of full-paid stock, as well as the three hundred and thirty-one shares of unpaid stock, making 971 shares, being much more than three-fifths of stock of the New Orleans, Metairie and Lake Railroad Company, in order the more conveniently to consummate the consolidation of the companies, and being fully authorized by the directors of said company, doth sign this agreement for and on behalf of said company—

And the undersigned directors of the New Orleans City Railroad Company being fully authorized to sign the same on behalf of said company.

(Signed) EDW. S. WURZBURGER.
F. WINTZ, *President.*
P. IRWIN.
B. BISCOE.
JAMES JACKSON.

Be it remembered that on this twelfth day of January, 1876, the board of directors of the New Orleans City Railroad Com-
368 pany met at their office, No. 124 Canal street, and entered into an examination of the vote cast and subscribed by the stockholders of the said company for the approval or non-approval of an agreement entered into by the said company and the New Orleans, Metairie & Lake Railroad Company, dated December 21st, 1875, to amalgamate and consolidate the two companies into one under the name of the New Orleans City Railroad Company, and also to increase the capital stock of the said company one thousand shares, and of which matter the stockholders had due notice by advertisement in the public papers. It was found that eighty-six hundred and fifteen shares had been voted and subscribed in approval of said agreement of consolidation and that no vote had been cast against

it, and, the said eighty-six hundred and fifteen shares being more than ($\frac{3}{5}$) three-fifths of the stock of the said railroad company, the president and directors declare that the said agreement has been approved in accordance with the law, and, considering that the stockholders of the New Orleans, Metairie & Lake Railroad Company had already approved of said agreement, as appears therein, they do hereby declare that the consolidation of the two companies has been completed; therefore it is ordered that a copy of said agreement and of this proceeding be transmitted to the secretary of state, to be by him deposited in the archives of his office in accordance with the law in such case made and provided.

(Signed) F. WINTZ, *President.*
C. C. LEWIS, *Secretary.*

STATE OF LOUISIANA:

OFFICE OF SECRETARY OF STATE.

I hereby certify that the foregoing is a true copy of the agreement of amalgamation and consolidation of the "New Orleans, Metairie & Lake Railroad Company" with the "New Orleans City Railroad Company," together with the vote and proceedings of the stockholders of the companies approving said agreement, filed in this office on the twenty-fourth day of January, A. D. 1876.

Given under my hand and seal of the State the day and date above mentioned.

N. DURAND,
Assistant Secretary of State.

369 An act to incorporate the New Orleans, Metairie and Lake Railroad Co.

No. 133.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in General Assembly convened, That P. O. Peyroux, J. G. Campbell, H. W. W. Reynolds, J. Wilson Shaw, John Schrenk, James Moran, F. Mallerich, James Shannon, and John O. Loze and such other persons as may hereafter be associated with them, their successors and assigns, shall constitute a body corporate, and are hereby incorporated under the name of the New Orleans, Metairie and Lake Railroad Company, and by that name shall have perpetual succession for the purpose of building and maintaining a passenger and freight railroad as hereinafter described, with such incidental powers and privileges as may be necessary for constructing, repairing, and working the same.

SEC. 2. Be it further enacted, etc., That the capital stock of said company shall be five hundred thousand dollars, represented by five thousand shares of one hundred dollars each, with liberty to increase the same in the manner provided by law. The incorporators aforesaid are hereby constituted commissioners, and as such are authorized to open books of subscription to the capital stock of the company, and to appoint subscription agents. Five per cent. of amount subscribed for shall be paid by the subscriber at the time of said

subscription, and the balance in such installments as may be required by the board of directors: Provided, that not more than ten per cent. of said subscription shall be called for oftener than once in thirty days, and if any subscriber shall fail or neglect to pay any installment thus required to be paid within fifteen days after the same shall be due and payable the stock on which it is demanded and the installments paid thereon may be declared forfeited to the company by the board of directors, and, should they deem it advisable, they are authorized to receive subscriptions to make up such deficient shares.

SEC. 3. Be it further enacted, etc., That the domicile of the company shall be in the city of New Orleans, and there shall be seven directors of its affairs, each of whom shall own at least twenty-five shares of the capital stock of the company. All powers of this corporation are hereby vested in said board of directors, a majority of the board being necessary to form a quorum, and a decision of such majority shall be a valid corporate act. The board shall be elected within thirty days of the opening of the books of subscription, and annually thereafter on the first Monday of January, ten
370 days' previous notice being given of said election in at least two newspapers of the city of New Orleans. In the event of a failure from any cause to elect directors at the specified time, the existing board shall hold over until an election is held, of which it shall be their duty to give immediate notice. At all elections and meetings of stockholders each stockholder shall be entitled to one vote for each share held by him in his own name on the day of election or meeting and for thirty days prior thereto: Provided, however, that no stockholder shall be entitled to more than five hundred votes. The board of directors shall at their first "making" (meeting) elect one of their body president, upon whom all process shall be served. They shall have the power to fill any vacancies in their body that may be occasioned by death, resignation, or otherwise; to adopt such laws and regulations as they may deem proper for the government of the company's affairs, and (to) "do" delegate such of their powers as may be necessary to officers or agents.

SEC. 4. Be it further enacted, etc., That the said corporation is hereby invested with all the rights and powers necessary for the construction, repair, and working of a single or double track railroad or both, including switches, turnouts, and connections, between the city of New Orleans and Lake Pontchartrain, with the privilege of constructing the same or any portion thereof on the public land north of and adjoining the new canal, or forming part of the levee of said canal from Claiborne street to Lake Pontchartrain, the said railroad to commence with a double track on Julia street, at the intersection of Front Levee, running out Julia street to Liberty street, one track continuing along Julia street and the other by way of Liberty and Cypress streets, and thence to the lake. They shall have the privilege of building such piers, wharves, breakwaters, or other works, warehouses, and depot buildings as may be necessary, for the proper conduct of their business, and also the right of widening, deepening, or extending the mouth of the new canal, should the

same be required. They shall also have the privilege of extending and building their road on Common, Galvez, Broad, or Carrollton avenues and of connecting with existing or future street railroads, and may lay their tracks on such bridges, intersections, or streets as may be necessary to form such connections: Provided, however, that in the event of steam locomotives being used, the said locomotives shall not be brought east of Galvez street—that is to say, between Galvez street and the river—it being well understood that nothing herein shall prevent the use of dummies or atmospheric air propellers on any portion of said road.

SEC. 5. Be it further enacted, etc., That they shall also have the privilege of constructing a railroad on Canal or Carrollton avenue, in the parishes of Jefferson and Orleans, connecting with the road to be constructed as set forth in the foregoing sections and extending from some convenient point in Carrollton to the new canal.

SEC. 6. Be it further enacted, etc., That it shall be, and it is hereby, made the duty of the lessees of the new canal to so dispose of the dirt thrown up in widening or deepening said canal as may be best for the protection from overflow of the lands north and ad-
371 joining the canal, and at the same time afford every facility for the construction of the railroad herein provided for, which shall also be so constructed as to add to the efficiency of said levee.

SEC. 7. Be it further enacted, etc., that this act shall take effect from and after its passage.

(Signed) CHAS. W. LOWELL,
Speaker of the House of Representatives.

(Signed) OSCAR J. DUNN,
Lieutenant Governor and President of the Senate.

Approved April 29, 1869.

(Signed) H. C. WARMOTH,
Governor of the State of Louisiana.

A true copy.
GEO. E. BOVEE,
Secretary of State.

372 *Contract with the City of New Orleans for Prytania, Street Extension.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this twenty-seventh day of the month of February, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh, before me, Joseph Dewey Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and official notary of the city of New Orleans, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared the Honorable Matthew D. Lagan, president *pro tempore* of the city council of the city of New Orleans and acting mayor of the said city of New Orleans, herein acting in his official capacity aforesaid, being herein and hereunto specially authorized and empowered by ordinance number fifty-four (54), council series, adopted by the council of the city of New Orleans on the eleventh day of January, A. D. 1883, a duly certified copy of which ordinance is hereto annexed and made part hereof.

Also appeared Messieurs Joseph A. Walker and William E. Levrich, respectively, president and secretary of the New Orleans City Railroad Company, a duly incorporated institution, domiciliated and doing business in this city, herein acting for and on behalf of said company under and by virtue of the special power and au-
373 thority conferred on them by a resolution adopted by the board of directors of said company at a meeting of said board held in this city on the tenth day of January, 1883, a duly certified copy of which resolution is hereto annexed and made part hereof, and is in the words and figures following, to wit:

"The extension of Prytania-Street line was next taken under consideration.

"The ordinance, as passed by the council, was read. Mr. Lyons moved, seconded by Mr. B. W. Taylor, that the president be authorized to make a contract with the city, and that the president and secretary be authorized to sign all papers accepting same."

And said Matthew D. Lagan, president *pro tempore* and acting mayor, as aforesaid, declared that, acting in his aforesaid capacity for and in behalf of the city of New Orleans and in pursuance of the provisions of said ordinance No. 54, council series, he, said Matthew D. Lagan, acting mayor, does by these presents, for the consideration and on the terms and conditions hereinafter set forth, grant and confirm unto the said New Orleans City Railroad Company or its successors or assigns the right of way, franchise, or privilege of constructing, running, operating, and maintaining as an extension of their present "Camp and Prytania Streets car line" a double-track street-car railroad, with all the necessary turn-tables, switches, and turnouts for passenger traffic only, through Prytania street, from its junction with Toledano street, to Upper Line street, through Upper Line street to Pitt street, through Pitt street to Soniat street, through Soniat street to Boudousquie street, and through Boudousquie street to Peters avenue, for a term of years to begin and be computed from this date and to continue until the first day of January, one thousand nine hundred and five (1905), subject to the terms, penalties, and conditions of this contract and said ordinance No. 54, council series, which is in the words and figures following, to wit:

MAYORALTY OF NEW ORLEANS,
CITY HALL, *Jan.* 11, 1883.

(No. 54, council series.)

An ordinance granting to the "New Orleans City Railroad Company" or its assigns the right of way, franchise, or privilege
374 of constructing, operating, and maintaining a double-track street railroad through certain streets in the sixth district of this city, to be used in connection with and be a continued part of their "Camp and Prytania Streets line."

Be it ordained by the council of the city of New Orleans, That the right of way, franchise, or privilege of constructing, running, operating, and maintaining as an extension of their Camp and Prytania car lines a double-track street railroad through the following-named streets, with all necessary turn-tables, switches, and turnouts, be, and the same is hereby, granted to the "New Orleans City Railroad Company" or its assigns for a term equal to the remaining number of years of their present franchise, which expires on the 1st day of January, 1905, according to the conditions and stipulations hereinafter stated.

Be it further ordained, etc., That this right of way, franchise, or privilege shall commence from the junction of Prytania and Toledano streets, connecting with their present Prytania-street tracks, through Prytania street to Upper Line street, through Upper Line to Pitt street, through Pitt to Soniat street, through Soniat to Boudousquie street, and through Boudousquie to Peters avenue.

Be it further ordained, etc., That the material used in the construction of said road shall be as follows:

1. Cross-ties.—The cross-ties shall be of the best quality of cypress or upland pine, eight (8) feet long, hewn or sawn on two opposite sides, having not less than ten (10) inches of face and seven (7) inches of uniform thickness. They shall be notched two inches in depth for insertion of stringers, and their distance apart shall not be more than four (4) feet from centres.

2. Stringers.—The stringers shall be of the best quality of milled pine, of not less than five (5) by nine (9) inches and not less than twenty (20) feet long. They shall be fastened to each cross-tie inside and outside by spiked wrought-iron knees half ($\frac{1}{2}$) an inch thick, two (2) inches wide, and each part of knees six (6) inches long.

3. Tie-rods.—The stringers shall be fasted by tie-rods five-eighths ($\frac{5}{8}$) of an inch in diameter and be of sufficient length, having
375 heads, threads, and nuts, and placed throughout every ten (10) feet apart; and

4. Rails.—The rails used on this line of road shall be the flat rail, five (5) inches, resting on suitable chairs at their ends, and shall be well spiked with six (6) inch wrought-iron spikes. The entire space between the rails and tracks shall be transversely planked with 3 x 12 inches milled pine, and along the two (2) outer sides of the tramways throughout this route shall be placed closely

to the stringers and on a level with the top of the rail, one plank not less than 3 x 12 inches in dimension.

Be it further ordained, etc., That it shall be the duty of the said railroad company to construct all crossings, bridges, and culverts and wings of the same which in the opinion of the commissioner of public works and the city surveyor are at any time needed, and to keep the said streets between the banquette curb lines, including all plankings, crossings, bridges, culverts, and wings of same, and also all the intersections of the streets of this route, at all times in good roadway order and condition, subject to the approval of the commissioner of public works and city surveyor.

Be it further ordained, etc., That the upper terminus of this extension shall be at any point the said company may select between Peters avenue and Soniat street; in other words, just where their stables, shops, and car-houses may be constructed, according to existing laws and ordinances.

Be it further ordained, etc., That mules or horses shall be used as the motors of this line, and shall, when upon the road, be belled with the usual car-bell and not be driven at a greater rate of speed than six miles per hour; and in no case shall steam or other motors than herein specified be used by this company, unless by consent of a majority of the property-holders residing along this route and the concurrence of the council of this city.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" shall commence operations on said road within thirty days after the passage of this ordinance, and shall have the same finished and completed within six months thereafter; all of which shall be constructed according to lines and levels to be furnished by the city surveyor and to the entire satisfaction of the commissioner of public works and city surveyor.

376 Be it further ordained, etc., That the cars on this route shall leave their stations or starting points at succeeding intervals of times: 1st. Not exceeding five (5) minutes between the hours of five (5) a. m. and nine (9) p. m. 2d. Not exceeding fifteen (15) minutes between nine (9) p. m. and twelve thirty (12.30) a. m. 3d. And not exceeding sixty (60) minutes between twelve thirty (12.30) a. m. and five (5) a. m. And the fare to be charged on said line of road shall not exceed five (5) cents between Canal street and its upper terminus or for a lesser distance either way between the hours of five (5) a. m. and twelve thirty (12.30) a. m., and the fare to be charged as above between twelve thirty (12.30) a. m. and five (5) a. m. shall not exceed ten (10) cents either way.

Be it further ordained, etc., That the "New Orleans City Railroad Company" shall, for and in consideration of this franchise, right of way, or privilege herein granted, bind itself to pave the city's portion of said streets within the last ten years of this contract with such pavement or material as the city may select, it being well understood that the above work is to be commenced within the year 1895 and pushed to an early completion, but, should the said "New Orleans City Railroad Company" desire to avail itself of the entire ten years to do the work, at least one-tenth of said work

shall be commenced and finished without delay during each year embraced in the period between the years 1895 and 1905.

Be it further ordained, etc., That the property and appurtenances connected with this section of road and belonging to said "New Orleans City Railroad Company" shall revert to the city of New Orleans at the expiration of this franchise or right of way on a valuation to be ascertained by two disinterested persons, one to be appointed by the railroad company and the other by the city, and in the event of a disagreement as to said valuation between the said two persons thus appointed a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final and binding.

Be it further ordained, etc., That it is hereby made the duty of the commissioner of public works and city surveyor to notify the said company in writing, through its president or chief officer, of any violation of the requirements or agreements contained in
377 this ordinance, giving them a stated time to rectify the same; and if upon the expiration of such time the company has failed, neglected, or refused to comply with such notice, then the city council shall have the said violation rectified at the expense of said company without further notification; the cost for so doing to be recoverable before any court of competent jurisdiction.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" bind themselves to complete the said continuation of road within the time hereinbefore stated, and for the faithful execution of the same the said railroad company shall furnish to the city of New Orleans, to the satisfaction of the city council, good and solvent security in the shape of a bond in the sum of $5,000, naming real estate unencumbered. The said bond shall be in favor of the mayor of the city of New Orleans, and be filed and recorded in the mortgage office of the city of New Orleans. And it is well understood that in case of failure by the said company to comply with the before-mentioned conditions and requirements to finish the work of construction within the time fixed its bond shall then become forfeited to the city of New Orleans. In case the commissioner of public works and city surveyor be dissatisfied with the manner in which the work is being executed or should the company fail to complete the work as above specified the commissioner of public works and city surveyor shall report the same to the city council, which body shall have the right to annul the franchise without putting the company in default, as required by article 1905 of the Civil Code or any other law or laws, and without indemnity; and it is to be well understood that in case the company shall abandon the work or not finish the same in accordance with this ordinance the said company shall forfeit all claims it may have for or in any part of the work done by it up to the date of its abandonment, the company expressly agreeing and understanding that this condition is in all things binding and that the company, their heirs, legal representatives, or assigns, shall at no time, in any court of justice, by plea, answer, exception, motion, objection of any kind, sort, or description, or under any circumstance, set up, urge, or in any way allege, plead, or claim that the

conditions of this ordinance are not in all respects legal, binding, and obligatory on the company or its legal representatives or assigns.

378 Adopted by the council of the city of New Orleans January 9, 1883.

M. McNAMARA,
Clerk of Council.

A true copy.
C. L. WALKER,
Secretary to the Mayor.

Approved January 11, 1883.

W. J. BEHAN, *Mayor.*

And said Joseph A. Walker, president, and William E. Leverich, secretary, of said New Orleans City Railroad Company, acting for and in behalf of their said company as aforesaid, declared that they accept said ordinance No. 54, council series, with all its rights and privileges and subject to all its terms, conditions, and penalties, for said New Orleans City Railroad Company, hereby promising for and binding said New Orleans City Railroad Company or its successors or assigns to well and faithfully perform and execute all the obligations imposed on said company by the terms of said ordinance and to observe and comply with all the conditions and stipulations therein contained in every particular, and that said New Orleans City Railroad Company shall at all times abide by and hold its successors or assigns amenable and subject to the terms, penalties, and conditions of said ordinance No. 54, council series, and of this contract, and particularly to a strict compliance with the following requirements, to wit:

That said railroad extension shall be commenced and completed within the time and constructed of material of the kind and quality specified; that the cars shall be run according to the schedule established in said ordinance, and that no higher rates of fare shall be charged than are also therein fixed.

That said New Orleans City Railroad Company or its successors or assigns, as a part consideration for said franchise, right of way, or privilege, shall, at its own cost, charge, and expense for all material and labor and without indemnity or right of reclamation, construct and maintain all crossings, bridges, and culverts and all wings of same; also all the intersections of streets along the line or route of said railroad, and at all times to keep all such crossings, bridges, culverts, and wings and the intersections of all streets in good

379 roadway — and condition, the whole to be done as may from time to time be directed by the proper officers of the city of New Orleans and subject to their approval.

That said New Orleans City Railroad Company or its successors or assigns, as a further consideration for this right of way, franchise, or privilege, shall, within the last ten years of the period embraced in this contract, at its own cost, charge, and expense for labor and material and without indemnity or right of reclamation, pave the city's portion of the streets through which the roads may pass

with such material as the city of New Orleans may select, it being well understood that the paving of such streets shall be commenced during the year one thousand eight hundred and ninety-five (1895), and at least one-tenth of the whole of such paving shall be completed during that and each succeeding year until the expiration of this right of way, franchise, or privilege, and all such paving shall be done within the least possible delay and with as little inconvenience to the public as possible.

It is well understood that in case of failure by the said New Orleans City Railroad Company or its successors or assigns to begin or complete the extension of the said city railroad as herein contemplated within the time herein fixed, or in case the city council of the city of New Orleans shall be dissatisfied with the manner in which the work of constructing said railroad may be prosecuted and executed by said railroad company, or in case said New Orleans City Railroad Company or its successors or assigns shall at any time during the existence of this right of way, franchise, or privilege abandon the same or fail to manage and conduct said railroad extension or run the cars thereon as contemplated in said ordinance and in this contract in every particular, or should said New Orleans City Railroad Company or its successors or assigns refuse or fail to pave the city's portion of said streets as contemplated in said ordinance, then and in that case the right is hereby expressly reserved by and granted to the city council of the city of New Orleans or its successors to declare forfeited or to annul this right of way, franchise, or privilege without being required to put said railroad company or its successors or assigns in default, as is otherwise required by law, or without being required to apply to a court of justice to annul the same and without indemnity; and in case the city council of the city of New Orleans should forfeit or annul this right of way, franchise, or privilege for any cause whatever the property and all appurtenances connected with or belonging to said section of road comprised within Toledano street and Peters avenue as expressed in said ordinance and belonging to said New Orleans City Railroad Company or its successors or assigns shall revert to and become the property of the city of New Orleans without any compensation or indemnity whatever to said New Orleans City Railroad Company or its successors or assigns.

It is also well understood that in case said New Orleans City Railroad Company or its successors or assigns shall at any time fail, neglect, or refuse, after proper notice, to obey the orders or instructions of the proper officers of the city of New Orleans in relation to the performance by said railroad company of the obligations or requirements herein imposed and provided in said ordinance the city of New Orleans shall have the right of rectifying the violation or neglect at the cost, charge, and expense of the said New Orleans City Railroad Company without further notice, and the cost for so doing shall be paid by New Orleans City Railroad Company or its successors or assigns, and in case of refusal to pay by said company the amount thereof shall be recoverable before any court of competent jurisdiction.

It is also well understood that the terms and conditions of said ordinance and this contract are in all things binding, and that said New Orleans City Railroad Company or its successors or assigns shall at no time in any court of justice, by plea, answer, exception, motion, or objection of any kind or under any circumstances, set up, urge, or in any way allege, plead, or claim that such terms and conditions are not in all respects legal, binding, and obligatory on said company and its successors or assigns.

It is also understood that on the expiration of this right of way, franchise, or privilege all the property and appurtenances belonging to or connected with this section of said railroad and belonging to said New Orleans City Railroad Company or its successors or assigns shall revert to the city of New Orleans
381 at a valuation which may then be placed thereon by appraisers, as provided in said ordinance.

And now personally came and intervened herein Mr. Richard M. O'Brien, a resident of this parish, who, having read what is hereinbefore written, declared that he does hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said New Orleans City Railroad Company as far as the same relates to the building and completion of said railroad extension within the time fixed, and binds himself in favor of the city of New Orleans in the full sum of five thousand dollars, lawful money of the United States, payable on demand to the said mayor of the said city of New Orleans or his successors in office.

Now, the condition of the foregoing bond or obligation is such that if the said New Orleans City Railroad Company or its successors shall well, truly, and faithfutly do and perform all and singular the requirements of the foregoing contract in so far as the same relates to the building and completion of said railroad extension within the time fixed strictly in accordance with the specifications and to the satisfaction of the city council of the city of New Orleans, then the above-written bond or obligation shall be null and void and of no effect, but otherwise to be and remain in full force and virtue. The said surety hereby waives the benefit of division and discussion granted by law to sureties.

Thus done and passed, in my office, in the city of New Orleans aforesaid, the day, month, and year first aforesaid, in the presence of Charles G. Rebentisch and William J. McGeehan, witnesses, residing in this parish, who have signed their names with the said parties and me, notary, after due reading the whole.

(Original signed) M. D. LAGAN, *Acting Mayor.*
J. A. WALKER, *President.*
W. E. LEVERICH, *Secretary.*
R. M. O'BRIEN.
C. G. REBENTISCH.
W. J. McGEEHAN.
J. D. TAYLOR, *Notary Public.*

A true copy of the original.
New Orleans, March 5th, 1883.

J. D. TAYLOR,
Notary Public.

382 Ordinance No. 217, council series.

Be it ordained by the council of the city of New Orleans, That ordinance No. 54, council series, be, and the same is hereby, amended by striking out all after the words "through Upper Line to Pitt street," in line seven, section two, and inserting the following: Through Pitt to Soniat street by double tracks; through Pitt street from its junction with Soniat street to Dufossat street by single track; through Dufossat street by single track to Boudousquie street, and to a point between Boudousquie street and St. Charles avenue on Dufossat street by double tracks, and from the junction of Soniat and Pitt streets through Soniat to Boudousquie street by single track, and through Boudousquie street by single or double tracks to Peters avenue, so that the same shall read:

Be it further ordained, etc., That this right of way, franchise, or privilege shall commence from the junction of Prytania and Toledano streets, connecting with their present Prytania-street tracks; through Prytania street to Upper Line street; through Upper Line to Pitt street; through Pitt to Soniat street by double tracks; through Pitt street from its junction with Soniat street to Dufossat street by single track; through Dufossat street by single track to Boudousquie street and to a point between Boudousquie street and St. Charles avenue on Dufossat street by double tracks, and from the junction of Soniat and Pitt streets through Soniat to Boudousquie street by single track, and through Boudousquie street by single or double tracks to Peters avenue, it being well understood that the above amendments shall be subject to all conditions contained in said original ordinance No. 54, council series.

(Adopted March 27th, 1883.)

383 *Contract with the City of New Orleans for Magazine-Street Extension.*

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans.

Be it known that on this fifteenth day of the month of May, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States of America the one hundred and seventh, before me, Joseph Dewey Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and official notary of the city of New Orleans, and in the presence of the witnesses hereinafter named and undersigned—

Personally came and appeared the Honorable William J. Behan, mayor of the city of New Orleans, herein acting in his official capacity as mayor aforesaid, being herein and hereunto specially authorized and empowered by ordinance number two hundred and forty-eight (248), council series, adopted by the council of the city of New Orleans on the tenth day of April, A. D. 1883, and ordinance number two hundred and seventy-six (276), council series (amendatory of said ordinance No. 248), adopted by the said council on the

first day of May, A. D. 1883, duly certified copies of which ordinances are hereto annexed and made part hereof.

Also appeared Mr. Joseph A. Walker, president of the New Orleans City Railroad Company, a duly incorporated institution domiciliated and doing business in this city, herein acting for and on behalf of said company under and by virtue of the special power and authority conferred on him by a resolution adopted by the board of directors of said company at a meeting of said board held in this city on the second day of May, 1883, a duly certified copy of which resolution is hereto annexed and made part hereof,
384 and is in the words and figures following, to wit:

"Resolved, That the franchise granted the company by the city council and known as the Magazine-Street Extension line be accepted by the board, and that the president be authorized to sign all the necessary papers accepting same."

And said William J. Behan, mayor as aforesaid, declared that, acting in his aforesaid capacity and for and in behalf of the city of New Orleans and in pursuance of the provisions of said ordinances Nos. 248 and 276, council series, he, said William J. Behan, mayor, does by these presents, for the consideration and on the terms and conditions hereinafter set forth, grant and confirm unto the said New Orleans City Railroad Company or its successors or assigns the right of way, franchise, or privilege of constructing, running, operating, and maintaining, as an extension of their present "Camp and Magazine Streets car line," a double-track street-car railroad, with all the necessary turn-tables, switches, and turnouts, for passenger traffic only, from their present tracks at the junction of Magazine and Toledano streets, through Magazine street by double track to Louisiana avenue; through Louisiana avenue (lower side) to Laurel street; through Laurel street by single track to Valmont street, and from Valmont street up by double track through Laurel street to the upper city park, returning through Laurel street to Valmont street; thence through Valmont street by single track to Constance street; thence through Constance street by single track to Louisiana avenue; thence through Louisiana avenue (upper side) by single track to Magazine street; thence through Magazine street by double track, as heretofore mentioned, to starting point, for a term of years to begin and be computed from this date and continue until the first day of January, one thousand nine hundred and five (1905), subject to the terms, penalties, and conditions of this contract and said ordinances Nos. 248 and 276, council series, which are in the words and figures following, to wit:

MAYORALTY OF NEW ORLEANS,
CITY HALL, *April* 13, 1883.

(No. 248, council series.)

An ordinance granting to the "New Orleans City Railroad Company" or its assigns the right of way, franchise, or privilege
385 of constructing, operating, and maintaining a street railroad through certain streets in the sixth district of this city to be used in connection with and be a continued part of their "Camp and Magazine Streets line."

Be it ordained by the council of the city of New Orleans, That the right of way, franchise, or privilege of constructing, running, operating, and maintaining, as an extension of their Camp and Magazine Streets car lines — through the following-named streets, with all necessary turn-tables, switches, and turnouts, be, and the same is hereby, granted to the "New Orleans City Railroad Company" or its assigns for a term equal to the remaining number of years of their present franchise, which expires on the 1st day of January, 1905, according to the conditions and stipulations hereinafter stated.

Be it further ordained, etc., That this right of way, franchise, or privilege shall commence from their present tracks at the junction of Magazine and Toledano streets, through Magazine by double track to Louisiana avenue; through Louisiana avenue (lower side) to Laurel street; through Laurel street by single track to Valmont street, and from Valmont street up by double track through Laurel street to the upper city park, returning through Laurel street to Valmont street; thence through Valmont street by single track to Constance street; thence through Constance street by single track to Louisiana avenue; thence through Louisiana avenue (upper side) by single track to Magazine street; thence through Magazine street by double track (as heretofore mentioned) to starting point.

Be it further ordained, etc., That the material used in the construction of said road shall be as follows:

1. Cross-ties.—The cross-ties shall be of the best quality of cypress or upland pine, eight (8) feet long, hewn or sawn on two opposite sides, having not less than ten (10) inches of face and seven (7) inches of uniform thickness; they shall be notched two inches in depth for insertion of stringers, and their distance apart shall not be more than four (4) feet from centres.

2. Stringers.—The stringers shall be of the best quality of milled pine, of not less than five (5) by nine (9) inches and not
386 less than twenty (20) feet long; they shall be fastened to each cross-tie inside and outside by spiked wrought-iron knees half ($\frac{1}{2}$) an inch thick, two (2) inches wide, and each part of knee six (6) inches long.

3. Tie-rods.—The stringers shall be fastened by tie-rods five-eighths ($\frac{5}{8}$) of an inch in diameter and be of sufficient length, having heads, threads, and nuts, and placed throughout every ten (10) feet apart; and,

4. Rails.—The rails used on this line of road shall be the flat rail, five

(5) inches wide, resting on suitable chairs at their ends, and shall be well spiked with six (6) inch wrought-iron spikes. The entire space between the rails and tracks shall be transversely planked with 3 x 12 inch milled pine, and along the two outer sides of the tramways throughout this route shall be placed closely to the stringers and on a level with the top of the rail one plank not less than 3 x 12 inches in dimension.

Be it further ordained, etc., That it shall be the duty of the said railroad company to construct all crossings, bridges, and culverts and wings of the same which, in the opinion of the commissioner of public works and the city surveyor, are at any time needed, and to keep the said streets between the banquette curb lines, including all plankings, crossings, bridges, culverts, and wings of same, and also all the intersections of the streets of this route, at all times in good roadway order and condition, subject to the approval of the commissioner of public works and city surveyor.

Be it further ordained, etc., That the upper terminus of this extension shall be at any point the said company may select between the lower line of said park and Henry Clay avenue—in other words, just where their stables, shops, and car-houses may be constructed, according to existing laws and ordinances.

Be it further ordained, etc., That mules or horses shall be used as the motors of this line, and shall, when upon the road, be belled with the usual car-bell and not be driven at a greater rate of speed than six miles per hour; and in no case shall steam or other motors than herein specified be used by this company unless by consent of a majority of the property-holders residing along this route and the concurrence of the council of this city.

387 Be it further ordained, etc., That the said "New Orleans City Railroad Company" shall commence operations on said road within sixty days after the passage of this ordinance and shall have the same finished and completed within six months thereafter, all of which shall be constructed according to lines and levels to be furnished by the city surveyor and to the entire satisfaction of the commissioner of public works and city surveyor.

Be it further ordained, etc., That the cars on this route shall leave their stations or starting points at succeeding intervals of time: 1st. Not exceeding ten (10) minutes between the hours of five (5) a. m. and nine (9) p. m. 2d. Not exceeding fifteen (15) minutes between nine (9) p. m. and twelve thirty (12.30) a. m. 3d. And not exceeding sixty (60) minutes between twelve thirty (12.30) a. m. and five (5) a. m., and the fare to be charged on said line of road shall not exceed five (5) cents between Canal street and its upper terminus or for a lesser distance either way between the hours of five (5) a. m. and twelve thirty (12.30) a. m., and the fare to be charged as above between twelve thirty (12.30) a. m. and five (5) a. m. shall not exceed ten (10) cents either way. It is well understood that this time of ten minutes may at any time be altered so as to make it five minutes or less between the starting of each car.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" shall, for and in consideration of this franchise,

right of way, or privilege herein granted, place to the credit of the city the sum of $50,000, to be paid in five yearly installments, the first to be paid on January 1, 1890, and the remainder in the years succeeding until whole amount be absorbed, and said $50,000 to be expended in the building of levees in the rear of the city.

Be it further ordained, etc., That the property and appurtenances connected with this section of road and belonging to said "New Orleans City Railroad Company" shall revert to the city of New Orleans at the expiration of this franchise or right of way on a valuation to be ascertained by two disinterested persons, one to be appointed by the railroad company and the other by the city, and in the event of a disagreement as to said valuation between the
388 said two persons thus appointed a third party or umpire shall be appointed by one of the district courts, the decision thereby had to be final and binding.

Be it further ordained, etc., That it is hereby made the duty of the commissioner of public works and city surveyor to notify the said company in writing, through its president or chief officer, of any violation of the requirements or agreements contained in this ordinance, giving them a stated time to rectify the same, and if, upon the expiration of such time, the company has failed, neglected, or refused to comply with such notice, then the city council shall have the said violation rectified at the expense of said company without further notification, the cost for so doing to be recoverable before any court of competent jurisdiction.

Be it further ordained, etc., That the said "New Orleans City Railroad Company" bind themselves to complete the said continuation of road within the time hereinbefore stated, and for the faithful execution of the same the said railroad company shall furnish the city of New Orleans, to the satisfaction of the city council, good and solvent security in the shape of a bond in the sum of $5,000, having real estate unencumbered. The said bond shall be made in favor of the mayor of the city of New Orleans and be filed and recorded in the mortgage office of the city of New Orleans; and it is well understood that in case of failure by the said company to comply with the before-mentioned conditions and requirements to finish the work of construction within the time fixed its bond shall then become forfeited to the city of New Orleans. In case the commissioner of public works and city surveyor be dissatisfied with the manner in which the work is being executed, or should the company fail to complete the work as above specified, the commissioner of public works and city surveyor shall report the same to the city council, which body shall have the right to annul the franchise without putting the company in default, as required by article 1906 of the Civil Code or any other law or laws, and without indemnity; and it is also to be well understood that in case the company shall abandon the work or not finish the same in accordance with this ordinance the said company shall forfeit all claims it may have for or in any part of the work done by it up to the date of its abandon-
389 ment, the company expressly agreeing and understanding that this condition is in all things binding, and that the

company, their heirs, legal representatives, or assigns, shall at no time in any court of justice, by plea, answer, exception, motion, objection of any kind, sort, or description, or under any circumstance, set up, urge, or in any way allege, plead, or claim that the conditions of this ordinance are not in all respects legal, binding, and obligatory on the company or its legal representatives or assigns.

Be it further ordained, etc., That nothing in this franchise shall be construed as holding the city responsible for any liability that may occur by reason of litigation or otherwise between the City Railroad Company and the Crescent City Railroad Company occasioned by rights now claimed by said Crescent City Railroad Company on Magazine street between Toledano street and Louisiana avenue.

Adopted by the council of the city of New Orleans 10th of April, 1883.

W. H. MICHEL,
Assistant Clerk of Council.

Approved 13th April, 1883.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

MAYORALTY OF NEW ORLEANS,
CITY HALL, *3d May*, 1883.

(No. 276, council series.)

Be it ordained, That ordinance No. 248, C. S., adopted 10th April, 1883, be, and the same is hereby, amended by striking out section nine (9), known as the "bonus clause," and inserting in lieu thereof the following:

Be it further ordained, That the said "New Orleans City Railroad Company" shall, for and in consideration of this franchise, right of way, or privilege herein granted, bind itself to pave the city's portion of said streets within the last ten years of this contract with such pavement or material as the city may select, it being well understood that the above work is to be commenced within the year 1895 and pushed to an early completion; but should the said New Orleans Railroad Company desire to avail itself of the entire ten years to do the work at least one-tenth of said work shall be
390 commenced and finished without delay during each year embraced in the period between the years 1895 and 1905.

Adopted by the council of the city of New Orleans 1st May, 1883.

M. McNAMARA,
Clerk of Council.

Approved 3d May, 1883.

W. J. BEHAN, *Mayor.*

A true copy.

C. L. WALKER,
Secretary to the Mayor.

And said Joseph A. Walker, president of said New Orleans City

Railroad Company, acting for and in behalf of his company as aforesaid, declared that he accepts said ordinances Nos. 248 and 276, council series, with all their rights and privileges and subject to all their terms, conditions, and penalties, for said New Orleans City Railroad Company, hereby promising for and binding said New Orleans City Railroad Company or its successors or assigns to well and faithfully perform and execute all the obligations imposed on said company by the terms of said ordinances and to observe and comply with all the conditions and stipulations therein contained in every particular, and that said New Orleans City Railroad Company shall at all times abide by and hold its successors or assigns amenable and subject to the terms, penalties, and conditions of said ordinances Nos. 248 and 276, council series, and of this contract, and particularly to a strict compliance with the following requirements, to wit:

That said railroad extension shall be commenced and completed within the time and constructed of material of the kind and quality specified; that the cars shall be run according to the schedule established in said ordinances Nos. 248 and 276, and that no higher rates of fare shall be charged than are also therein fixed.

That said New Orleans City Railroad Company or its successors or assigns, as a part consideration for said franchise, right of way, or privilege, shall, at its own cost, charge, and expense for all material and labor and without indemnity or right of reclamation, construct and maintain all crossings, bridges, and culverts and all wings of same; also all the intersections of streets along the line or route of said railroad, and at all times to keep all such crossings,
391 bridges, culverts, and wings and the intersections of all streets in good roadway — and condition; the whole to be done as may from time to time be directed by the proper officers of the city of New Orleans and subject to their approval.

That said New Orleans City Railroad Company or its successors or assigns, as a further consideration for this right of way, franchise, or privilege, shall, within the last ten years of the period embraced in this contract, at its own cost, charge, and expense for labor and material and without indemnity or right of reclamation, pave the city's portion of the streets through which the road may pass with such material as the city of New Orleans may select, it being well understood that the paving of such streets shall be commenced during the year one thousand eight hundred and ninety-five (1895), and at least one-tenth of the whole of such paving shall be completed during that and each succeeding year until the expiration of this right of way, franchise, or privilege, and all such paving shall be done within the least possible delay and with as little inconvenience to the public as possible.

It is well understood that in case of failure by the said New Orleans City Railroad Company or its successors or assigns to begin or complete the extension of the said city railroad, as herein contemplated, within the time herein fixed, or in case the city council of the city of New Orleans shall be dissatisfied with the manner in which the work of constructing said railroad may be prosecuted and

executed by said railroad company, or in case said New Orleans City Railroad Company or its successors or assigns shall, at any time during the existence of this right of way, franchise, or privilege, abandon the same or fail to manage and conduct said railroad extension or run the cars thereon as contemplated in said ordinance and in this contract in every particular, or should said New Orleans City Railroad Company or its successors or assigns refuse or fail to pave the city's portion of said streets, as contemplated in said ordinance, then and in that case the right is hereby expressly reserved by and granted to the city council of the city of New Orleans or its successors to declare forfeited or to annul this right of way, franchise, or privilege without being required to put said railroad
392 company or its successors or assigns in default, as is otherwise required by law, or without being required to apply to a court of justice to annul the same, and without indemnity; and in case the city council of the city of New Orleans should forfeit or annul this right of way, franchise, or privilege for any cause whatever, the property and all appurtenances connected with or belonging to said section of road comprised within Toledano street and the upper city park, as expressed in said ordinance, and belonging to said New Orleans City Railroad Company or its successors or assigns, shall revert to and become the property of the city of New Orleans without any compensation or indemnity whatever to said New Orleans City Railroad Company or its successors or assigns.

It is also well understood that in case said New Orleans City Railroad Company or its successors or assigns shall, at any time, fail, neglect, or refuse after proper notice to obey the orders or instructions of the proper officers of the city of New Orleans in relation to the performance by said railroad company of the obligations or requirements herein imposed and provided in said ordinances, the city of New Orleans shall have the right of rectifying the violation or neglect at the cost, charge, and expense of the said New Orleans City Railroad Company without further notice, and the cost for so doing shall be paid by said New Orleans City Railroad Company or its successors or assigns, and in case of refusal to pay by said company the amount thereof shall be recoverable before any court of competent jurisdiction.

It is also well understood that the terms and conditions of said ordinances and this contract are in all things binding, and that said New Orleans City Railroad Company or its successors or assigns shall at no time in any court of justice, by plea, answer, exception, motion, or objection of any kind, or under any circumstances, set up, urge, or in any way allege, plead, or claim that such terms and conditions are not in all respects legal, binding, and obligatory on said company and its successors or assigns.

It is also understood that on the expiration of this right of way, franchise, or privilege all the property and appurtenances belonging to or connected with this section of said railroad and belong-
393 ing to said New Orleans City Railroad Company or its successors or assigns shall revert to the city of New Orleans at a valuation which may then be placed thereon by appraisers, as provided in said ordinance.

It is also well understood that in the event of litigation between the said New Orleans City Railroad Company and the Crescent City Railroad Company, occasioned by rights now claimed by said Crescent City Railroad Company on Magazine street between Toledano street and Louisiana avenue, the city of New Orleans shall in no manner be held responsible or liable.

To these presents came and intervened Mr. William E. Leverich, secretary of the said New Orleans City Railroad Company, herein acting for and in behalf of his said company, who declared he has taken cognizance of all the foregoing and approves the same and accepts these presents for and on behalf of said New Orleans City Railroad Company.

And now personally came and intervened herein Mr. Richard M. O'Brien, a resident of this parish, who, having read what is hereinbefore written, declared that he does hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said New Orleans City Railroad Company, as far as the same relates to the building and completion of said railroad extension within the time fixed, and binds himself in favor of the city of New Orleans in the full sum of five thousand dollars, lawful money of the United States, payable on demand to the said mayor of the said city of New Orleans or his successors in office.

Now, the condition of the foregoing bond or obligation is such that if the said New Orleans City Railroad Company or its successors shall well, truly, and faithfully do and perform all and singular the requirements of the foregoing contract in so far as the same relates to the building and completion of said railroad extension within the time fixed, strictly in accordance with the specifications and to the satisfaction of the city council of the city of New Orleans, then the above-written bond or obligation shall be null and void and of no effect, but otherwise to be and remain in full force and virtue. The said surety hereby waives the benefit of division and discussion granted by law to sureties.

Thus done and passed in my office, in the city of New Orleans aforesaid, the day, month, and year first aforesaid, in the
394 presence of Charles G. Rebentisch and Ernest G. Rebentisch, witnesses, residing in this parish, who have signed their names with the said parties and me, notary, after due reading the whole.

(Original signed)

W. J. BEHAN, *Mayor.*
J. A. WALKER, *President.*
W. E. LEVERICH, *Secretary.*
R. M. O'BRIEN.
C. G. REBENTISCH.
E. G. REBENTISCH.
J. D. TAYLOR,
Notary Public.

A true copy of the original.
New Orleans, May 21st, 1883.

J. D. TAYLOR,
Notary Public.

395 *Sundry Grants from City of New Orleans.*

Ordinance No. 471, administration series.

Be it ordained by the council of the city of New Orleans, That the New Orleans City Railroad Company be, and is hereby, authorized to lay a single track on Toledano street from Camp street to Prytania street so as to connect the Magazine and Prytania Street lines of railroad tracks on said Toledano street: Provided, that this privilege shall continue during the pleasure of the council of the city of New Orleans, and that the track be laid in such manner as the administrator of improvements shall specify.

(Approved October 4th, 1870.)

Ordinance No. 1682, administration series.

Resolved by the city council of New Orleans, That permission be, and is hereby, granted to the New Orleans City Railroad Company to construct a double-track railroad from the terminus of the Levee and Barracks road, on Delery street, over the Levee road or street to the Crescent City Live Stock Landing and Slaughter-House Company's premises: Provided, the said railroad is constructed under the supervision of the administrator of improvements and the surveyor of the city of New Orleans.

Provided further, that the said railroad company shall keep the streets over which the extension is to be made in good repair from curb to curb; and it is well understood that the city does not agree to repurchase said extension either before, on, or after the expiration of the privilege on any terms.

(Approved July 30th, 1872.)

Ordinance No. 7725, administration series.

An ordinance to extend the franchise of the New Orleans City railroad.

Whereas the fair grounds of the New Louisiana Jockey Club have become one of the distinctive ornaments of the city, an at-
396 traction to strangers no less than a place of pleasant and healthful resort for our citizens, and contribute measurably to the pecuniary welfare of our city:

Be it ordained by the council of the city of New Orleans, That the New Orleans City railroad have leave, and they are hereby authorized and empowered, to lay and construct, under the supervision and direction of the city surveyor, a double or single track of rails between their present line and said grounds, similar in character and kind to their present line, and to operate their cars over the same by horses or mules and at such time as they may judge fit; such track or tracks to run from the present line of said company through Encampment, Fortier, and Mystery streets and across the intersection of said streets to said fair grounds, and with the consent of said New Louisiana Jockey Club to any point within the same.

This privilege or franchise is to continue until the expiration of the charter of said railroad company, and no extra charge is to be made for the use of this extension of said road by persons traveling over the same between the city and said fair grounds.

Be it further ordained, That the said railroad company, their transferees or assigns, shall keep the streets and bridges through which said route passes in good order and condition, the said road to be laid according to grades, lines, and levels to be given by the city surveyor and be finished to the satisfaction of the administrator of improvements and the city surveyor.

(Approved April 4th, 1882.)

397 APPENDIX.

Mortgage.

New Orleans City Railroad Company to Joseph A. Walker.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this first day of December, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States of America the one hundred and fourth, before me, Nicholas Browse Trist, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Frederick Wintz, president, and Curtis C. Lewis, secretary, of the "New Orleans City Railroad Company," a corporation organized under the laws of this State, domiciled in this city, the said appearers herein acting and stipulating for and in the name and behalf of said company by virtue of the powers in them vested by the charter and by-laws of said corporation and in pursuance of a resolution of the board of directors thereof adopted at their meeting of October 10th, 1879, a copy of which, duly certified, is hereto annexed for reference.

Which appearers did severally declare as follows:

Whereas, by act passed before G. Le Gardeur, Jr., notary in this city, on the second day of October, 1879, the said com-
398 pany has acquired for the further term of twenty-five years the right of way and other franchises for the hereinafter-described lines of railroad owned by the said company;

And whereas, in order to comply with the terms and conditions of said contract with the city of New Orleans, to maintain said roads, and to provide for the safe and comfortable transportation of passengers, extensive repairs are absolutely necessary to be made to the tracks, buildings, and equipments of the various lines of railroad owned by the said company, which repairs, as regard the tracks, will be so extensive and thorough as to be equivalent to a total reconstruction of the same;

And whereas an extension of the line known as the City and

Lake railroad and the construction of extensive and costly improvements at the lake end thereof are contemplated by said company;

And whereas, in order to reconstruct said tracks, repair the buildings and rolling stock, construct the said extension of road and improvements thereon, procure new cars, locomotives, mules, and all other necessary equipment for the various hereinafter-described lines of railroad belonging to said company, it is necessary that a loan be contracted by the same;

And whereas the board of directors of said company, which, by article IX of the charter thereof, is vested with all the powers of the corporation, has authorized the contracting of a loan of seven hundred thousand dollars for the purposes aforesaid, to be evidenced by an issue of the bonds of said company for that amount, payable twenty-four years after date, and bearing interest at the rate of six per cent. per annum, payable semi-annually, said bonds to be secured by mortgage on the real estate, franchises, rights, and other property of said company, conformably with the laws of this State in such cases made and provided;

All of which will appear by reference to the aforesaid hereto annexed copy of the resolution of the board of directors, adopted by over three-fourths of the members thereof at their said meeting of October 10th, 1879:

Now, therefore, the said appearers declared and acknowledged that the said "New Orleans City Railroad Company" is
399 justly and truly indebted unto Joseph A. Walker, of this city, in the full sum of seven hundred thousand dollars by him loaned and advanced to the said company for the purposes aforesaid, for which the said company has issued eighteen hundred bonds, signed by the said appearers in their official capacity, of which four hundred, numbered from 1 to 400, inclusive, are for the sum of one thousand dollars each; four hundred, numbered from 1 to 400, inclusive, for the sum of five hundred dollars each, and one thousand, numbered from 1 to 1,000, inclusive, for the sum of one hundred dollars each, all dated December 1st, 1879, and payable to J. A. Walker or bearer, at the office of said company, in New Orleans or in the city of New York, at the option of the holder, on the first of December, of the year one thousand nine hundred and three (1903), with interest at the rate of six per cent. per annum from date, payable semi-annually on the first of June and December of each year, and for which forty-eight interest coupons, numbered 1 to 48, inclusive, are attached to each bond.

All of which bonds have been paraphed "*ne varietur*" by me, notary, for identification herewith and delivered to the said Joseph A. Walker, here present, who acknowledges the receipt thereof, and accepts these presents for himself and any future holders of said bonds and interest coupons.

And in case it shall become necessary to institute legal proceedings for the recovery of the money of the amount of said bonds or interest coupons or any portion thereof it is agreed that the said New Orleans City Railroad Company shall pay the fees of the at-

torney-at-law who may be employed for said purpose, which fees are hereby fixed at five per cent. of the amount due and sued for:

Now, therefore, in order to secure the full and punctual payment and redemption of said bonds, together with the interest thereon as the same shall become due and as evidenced by the coupons aforesaid, together with all costs in case of suit, including the five per cent. attorney's fees above stipulated, the said New Orleans City Railroad Company does by these presents specially mortgage and hypothecate unto the said Joseph A. Walker and unto such person or persons who may eventually be the holder or holders of
400 the said bonds and coupons the following-described property, to wit:

First. Seven lots of ground situated in the square number fourteen, which is bounded by Pleasant, Harmony, Camp, and Magazine streets, designated by the Nos. one, two, three, four, five, six, and seven on a plan drawn by C. A. Hedin, surveyor, on the 27th of November 1849, and deposited as plan No. 180 in the office of Theodore Guyol, notary public in this city; lots Nos. one, two, three, and four adjoin each other and measure each thirty feet front on Magazine street by one hundred and fifteen feet in depth between parallel lines, lot No. four forming the corner of Magazine and Pleasant streets, and lots Nos. five, six, and seven adjoin each other and measure each thirty feet front on said Pleasant street by one hundred and twenty feet in depth between parallel lines.

Second. A certain lot of ground situated in the said square No. fourteen, designated by the letter A on a sketch dated the 23d of June, 1852, and annexed to an act passed before L. R. Kenny, then notary in this city, on the 25th of June, 1852. Said lot measures thirty feet front on Pleasant street between Magazine and Camp streets by a depth of one hundred and twenty feet between parallel lines, American measure, and is composed of the rear part of the lots Nos. eight, nine, ten, and eleven of said square, according to the above-mentioned plan of C. A. Hedin.

Third. Four certain lots of ground situated in the said square No. fourteen, designated by the letters B, C, D, and E on a sketch paraphed "*ne varietur*" and annexed to an act passed before J. E. Coffey, notary, on the 24th day of March, 1859. Said lots adjoin each other and measure each thirty feet front on Camp street by a depth of eighty-five feet between parallel lines, said lot B forming the corner of Camp and Pleasant streets, which said four lots of ground form the greater part of lots designated by the Nos. eight, nine, ten, and eleven on the said above-mentioned plan by C. A. Hedin.

Fourth. Five certain lots of ground situated in the said fourth district, in square No. thirteen, comprised within Pleasant, Magazine, Camp, and Toledano streets, designated by the Nos. seven, eight, nine, ten, and eleven on a plan drawn by C. A. Hedin, dated the 21st day of February, 1849, and deposited in the office of L. R.
401 Kenny, then notary, and measure as follows, to wit: Lot No. seven measures twenty-nine feet one inch and one-eleventh front on Pleasant street by a depth of one hundred and nineteen feet four inches four and one-fourth lines on the line nearest to

Magazine street, and by a depth of one hundred and seventeen feet five inches and one line and five-elevenths on the line of lot No. six; lots Nos. eight, nine, ten, and eleven adjoin each other and measure each thirty-one feet nine inches and four lines front on Magazine street by the following depths, to wit: Lots Nos. eight, nine, and ten each one hundred and sixteen feet four inches and four-elevenths between parallel lines, and lot No. eleven one hundred and sixteen feet four inches and four-elevenths on the line of lot No. ten, and one hundred and seventeen feet two inches seven and three-fourths lines on the line of Suburb Plaisance.

Fifth. Three lots of ground situated in the said square No. thirteen, designated by the Nos. four, five, and six on said above-mentioned plan drawn by C. A. Hedin on the 21st of February, 1849, adjoining each other and measuring each twenty-nine feet one inch and one-eleventh front on said Pleasant street; twenty-nine feet three inches five lines and nine-elevenths in width in the rear by the following depths, to wit: Lot No. six, one hundred and fifteen feet five inches six lines and six-elevenths; lot No. five, one hundred and thirteen feet six inches three lines and seven-elevenths, and lot No. four, one hundred and eleven feet seven inches and eight-elevenths.

Sixth. Three certain lots of ground situated in the said square No. thirteen, designated by the Nos. one, two, and three on said above-mentioned plan drawn by C. A. Hedin on the 21st of February, 1849, and measuring as follows, to wit: Lot No. one, forming the corner of Camp and Pleasant streets, measures twenty-nine feet one inch and one-eleventh front on Pleasant street, one hundred and five feet nine inches deep and front on Camp street, one hundred and seven feet eight inches and ten-elevenths in depth on the line of lot No. two, and twenty-nine feet three inches and five lines and nine-tenths in width in the rear. Lot No. two measures twenty-nine feet one inch and one-eleventh front on Pleasant street,
one hundred and seven feet eight inches and ten-elevenths
402 deep on the line of lot No. one, one hundred and nine feet seven inches and nine-elevenths deep on the line of lot No. three, and twenty-nine feet three inches and five lines and nine-elevenths in width in the rear, and lot No. three measures seventy-nine feet one inch and one-eleventh front on Pleasant street, one hundred and nine feet seven inches and nine-elevenths in depth on the line of lot No. two, one hundred and eleven feet seven inches and eight lines on the line of lot No. four, and twenty-nine feet three inches and five and nine-elevenths lines in width in the rear, American measure.

Together with all the buildings and improvements on all of said properties and all appurtenances thereof.

Being the same properties which the said New Orleans City Railroad Company acquired by purchase from Henry Hart and Frederick Wintz by act passed before Edward Barnett, late notary in this city, on the twentieth day of March, 1861.

Seventh. A certain square of ground, together with all the buildings and improvements thereon, rights, ways, privileges, and appur

tenances thereto belonging or in anywise appertaining, situated in the second district of this city and comprised within Canal, Custom-House, Dupré, and White streets and designated by the No. thirty on a plan drawn by L. Surgi, surveyor, dated 31st of December, 1849, and deposited in the office of O. H. Perry, late a notary in this city; said square measures two hundred and eighty-three feet four inches seven lines on Canal street, a like measurement on Custom-House street, three hundred and thirteen feet four inches on Dupré street, and a like measurement on White street.

Being the same property which the said New Orleans City Railroad Company acquired by purchase from Wm. A. Bell by act passed before Theodore O. Stark, late notary in this city, on the 20th of July, 1860.

Eighth. A certain square of ground, with all the buildings and improvements thereon and the appurtenances thereof, situate, lying, and being in the third district of this city, bounded by Goodchildren, Love, Poland, and Lesseps streets, and having, English measure, two hundred and seventy seven feet eight inches front on Goodchilren street, the same front on Love street, three hundred and
403 ninety-six feet three inches front on Lesseps street, and the same front on Poland street, as per plan of Faubourg Washington, drawn by Joseph Pilie, city surveyor, under date of 25th of February, 1832, deposited in the office of Charles Janin, late notary public in this city, on the 5th of March following.

Being the same property which the said New Orleans City Railroad Company acquired by purchase from Chas. A. Barriere and Wm. S. Toole by act passed before Edward Barnett, late notary in this city, on the 30th day of March, 1861.

Ninth. A certain square of ground, with all the buildings and improvements thereon and the appurtenances thereof, situate in the second district of this city and designated by the No. thirty-one on a plan drawn by L. Surgi, surveyor, on the 31st of December, 1849, and deposited in the office of O. H. Perry, late a notary public in this city, which said square is bounded by Dupré, White, Custom-House, and Bienville streets, and is subdivided into twenty-two lots.

Being the same property which the said New Orleans City Railroad Company acquired by purchase from the German Society of New Orleans by act passed before Theodore Guyol, notary in this city, on the 13th day of June, 1877.

Tenth. A certain lot or parcel of ground of irregular dimensions, together with all the buildings and improvements thereon, situate in the square bounded by St. Charles, Pleasant, Toledano, and Prytania streets, in the fourth district of this city, and measuring six feet front on said St. Charles street, two hundred and eighty-six feet seven inches front on said Pleasant street, two hundred and eighty-seven feet six inches front on said Toledano street, and twenty-six feet on the rear line, together with all the buildings and improvements thereon and the appurtenances thereof.

Being the same property which the New Orleans City Railroad Company acquired by purchase from Edward J. Hart by act passed

before William L. Poole, notary in this city, on the 8th day of March, 1861.

Eleventh. A certain lot of ground situated in the fourth district of this city, designated by lot No. one of square bounded by Toledano, Pleasant, St. Charles, and Prytania streets, and measuring thirty-two feet eight inches, more or less, front on Prytania street by one hundred and fifty feet deep and front on Pleasant
404 street, and about twenty-six feet on the rear line dividing it from lot No. two, as per plan drawn by Adl. Knell, architect and civil engineer, dated the 11th of October, 1851, and deposited in the office of Ant. Doricourt, notary in this city, a sketch of which said plan is annexed to the act of purchase of said property by said company, together with all the buildings and improvements thereon and the appurtenances thereof.

Being the same property which the said New Orleans City Railroad Company acquired by purchase from Joseph Slado by act passed before Edward Barnett, late notary in this city, on the 20th day of March, 1861.

Twelfth. Eight lots of ground, together with all the buildings and improvements thereon and the appurtenances thereof, adjoining each other, situated in the second district of this city, designated by the Nos. five, six, seven, eight, nine, ten, eleven, and twelve, in a portion of ground which is bounded on two sides by the old shell road of Bayou St. John and on a third side by Esplanade street; Four of which lots, the Nos. 6, 7, 10, and 11, front on Esplanade street, and the four others, Nos. 5, 8, 9, and 12, front on said old shell road, which four first lots adjoin the four others in the rear; and the said eight lots, agreeably to a plan drawn by C. A. de Armas, dated 18th May, 1859, and deposited in the office of Joseph Cuvillier, notary in this city, have the following dimensions, in American measure, to wit:

Lot No. five measures thirty-two feet four inches and four lines front on the old shell road of Bayou St. John, two hundred and twenty-seven feet ten inches and five lines in depth on the line dividing it from lot No. 4, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot No. 8, and thirty-two feet five inches and a half line on the rear line.

Lot No. eight measures thirty-two feet one inch and four lines front on the old shell road of Bayou St. John, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot No. 5, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot No. 9, and thirty-two feet five inches and one-half line on the rear line.

Lot No. nine measures thirty-two feet one inch and four
405 lines front on old shell road, two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot No. 8, two hundred and thirty feet one line on the line dividing it from lot No. 12, and thirty-two feet five inches and one-half on the rear line.

Lot No. twelve measures thirty-two feet one inch and five lines front on the old shell road of Bayou St. John, two hundred and

thirty feet one line on the line dividing it from lot No. 9, and two hundred and thirty feet eight inches and five lines on the line dividing it from the property lately belonging to A. Xiques, and thirty-two feet five inches and one line and a half on the rear line.

Lot No. eleven measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet eight inches and six lines in depth on the line dividing it from lot No. 13, two hundred and thirty feet one line in depth on the line dividing it from lot No. 10, and thirty-two feet five inches one line and a half on the rear line.

Lot No. ten measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and thirty feet one line in depth on the line dividing it from lot No. 11, two hundred and twenty-nine feet three inches five lines on the line dividing it from lot No. 7, and thirty-two feet five inches and one-half line on the rear line.

Lot No. seven measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and twenty-nine feet three inches and five lines on the line dividing it from lot No. 10, two hundred and twenty-eight feet seven inches and one line on the line dividing it from lot No. 6, and thirty-two feet five inches and one-half line on the rear line.

And lot No. six measures thirty-two feet seven inches and two lines front on Esplanade street by two hundred and twenty-eight feet seven inches and one line in depth on the line dividing it from lot No. 7, and two hundred and twenty-seven feet ten inches and five lines in depth on the line dividing it from lot No. 3, and thirty-two feet five inches and a half line on the rear line.

Being the same property which the said New Orleans City Railroad Company acquired by purchase from the Church of St. Louis of New Orleans by act passed before Jos. Cuvillier, a notary in this city, on the 22d day of November, 1860.

406 Thirteenth. Four lots of ground, with all the buildings and improvements thereon and the appurtenances thereof, adjoining each other, situate in the second district of this city, designated by the Nos. one, two, three, and four in a portion of ground bounded on both sides by the Bayou St. John and on a third side by Esplanade street, which lots of ground measure, in American measure, as follows, to wit: Lot one, thirty-two feet one inch five lines front on the old shell road by two hundred and twenty-six feet five inches five lines in depth on the line dividing it from Mr. Musgrove's property. Lot No. four, thirty-two feet one inch four lines front on the old shell road by a depth of two hundred and twenty-seven feet two inches one line on the line dividing it from lot No. one, and two hundred and twenty-seven feet ten inches five lines in depth on the line dividing it from lot No. five. Lots Nos. two and three measure each thirty-two feet seven inches two lines front on Esplanade street by a depth as follows: Lot No. two, of two hundred and twenty-six feet five inches and six lines on the line dividing it from Mr. Musgrove's property; lot No. three, two hundred and twenty-seven feet two inches and one line on the line dividing it from lot No.

two, and two hundred and twenty-seven feet ten inches and five lines on the line dividing it from lot No. six. Said lots—Nos. one, two, three, and four—are contiguous to each other on their rear lines, agreeably to a plan drawn by Charles A. de Armas, dated 18th May, 1859, and deposited in the office of J. Cuvillier, notary, for reference, being the same property which the said New Orleans City Railroad Company acquired by purchase from Henry Willett by act passed before Edward Barnett, late notary in this city, on the 22d of September, 1865.

Fourteenth. The hereinafter-described lines of railroad belonging to said company as they now exist and the contemplated extension of the Lake road, together with all and singular the franchises, right of way, and other privileges of the said New Orleans City Railroad Company; all road-bed, rails, main tracks, and branches, stations, stables, car-sheds, and all other buildings, structures, and appurtenances; all passenger and freight cars, locomotives,
407 dummy engines, carts, wagons, and other rolling stock, machinery, tools, fixtures, and all other equipment and appurtenances of said roads, without any exception or reservation whatever.

Said mortgaged lines of railroad are as follows:

1st. The Magazine line, extending from station on square bounded by Toledano, Pleasant, Harmony, Camp, and Magazine, down Magazine to Canal, along Canal to intersection of St. Charles and Royal streets up Camp to Magazine at Market, up Magazine to station as above.

2nd. The Prytania line, extending from station in square bounded by Prytania, Pleasant, St. Charles, and Toledano streets, down Prytania to intersection of Camp at Calliope, down Camp to Poeyfarre, along Poeyfarre to Magazine, down Magazine to Canal, along Canal to intersection of St. Charles and Royal, up Camp to Prytania, up Prytania to station as above.

3rd. The Rampart and Dauphine line, extending from stand on Canal street north of St. Charles, along Canal to Rampart, down Rampart to Lesseps, along Lesseps to Levee, down Levee to the slaughter-house, up Levee to Caffin's lane, along Caffin's lane to Dauphine, along Dauphine to Poland, along Poland to Rampart, up Rampart to Canal, along Canal to St. Charles.

4th. The Bayou Bridge line, extending from stand on Canal street near St. Charles, along Canal to Rampart, down Rampart to Esplanade, down Esplanade to Bayou bridge.

5th. The French Market and Bayou line, extending from Bayou bridge along Esplanade to Peters street.

6th. The Canal line, extending from stand on Canal near St. Charles, along Canal to Metairie ridge, along the ridge to Bayou St. John.

7th. The Lake road, extending from stand on Canal street near Bourbon, out Canal to Metairie ridge, and along the bank of the new canal to the New Lake end on Lake Pontchartrain.

The said hereinabove-described real estate, railroad lines, franchises, and other property so to remain mortgaged and hypothecated

until the full and final payment and redemption of the said bonds and the interest coupons thereof, it being agreed that the said
408 New Orleans City Railroad Company shall not sell, alienate, or encumber the said property or any portion thereof to the prejudice of this act.

By reference to the hereto-annexed certificate of the recorder of mortgages in and for this parish it will appear that there are no other mortgages standing in the name of said New Orleans City Railroad Company and recorded against all its property, real and personal, situated in this parish than: 1st, the drainage privilege; 2nd, various mortgages for city taxes, amounting in the aggregate to the sum of $13,793.60; 3rd, the one in favor of the city of New Orleans for drainage, resulting from a writ issued by the superior district court on the 30th of July, 1875, for the sum of $314.13, with interest and costs; and, 4th, the one in favor of Aug. R. Montgomery, resulting from a writ issued by the United States circuit court on the 4th of September, 1879, for the sum of $10,380, with interest and costs, against the railroad, cars, fixtures, &c., of said company.

The payment of all of which reported encumbrances is being resisted by the said company, which binds itself to cause the inscriptions of the same to be erased and cancelled from the records of the mortgage office upon the termination of the litigation in regard thereto.

Thus done and passed in my office, at New Orleans, the day, month, and year first above written, in the presence of Frank Pace, Jr., and Wm. H. Hyatt, competent witnesses, residing in this city, who hereunto sign their names with the appearers and me, said notary, after the reading of the whole.

(Original signed)

F. WINTZ, *President.*
J. A. WALKER.
FRANK PACE, JR.
C. C. LEWIS, *Secretary.*
WM. H. HYATT.
N. B. TRIST,
Notary Public.

I hereby certify the above to be a true copy of the original on file in my notarial record, as witness my official seal and signature, at New Orleans, this first day of December, 1879.

N. B. TRIST,
Notary Public.

409 *Contract Providing for Payment of Bonds, &c., New Orleans City Railroad Co. and Joseph A. Walker.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this eleventh day of March, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fourth, before me, Nicholas Browse Trist, a notary public in and for the

parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Frederick Wintz, president of the New Orleans City Railroad Company, a corporation organized under the laws of this State and domiciliated in this city, the said appearer herein acting and stipulating for and in the name and behalf of said company by virtue of his office and in pursuance of a resolution of the board of directors thereof adopted at their meeting of March 10th, 1880, a copy of which, duly certified, is hereto annexed for reference; also came and appeared Joseph A. Walker, a resident of this city, which appearer declared as follows:

Whereas, by an act passed before the undersigned notary on the first day of December last, 1879, the said company, in order to secure the payment of an issue of its bonds to the number of eighteen
410 hundred for the aggregate amount of seven hundred thousand dollars, of even date with said act, payable to said J. A. Walker or bearer on the first of December, 1903, with interest at the rate of six per cent. per annum, payable semi-annually, did mortgage and hypothecate in favor of said Joseph A. Walker and of any future holders of said bonds certain real estate and lines of railroad, situate, lying, and being in this city, and all franchises, rights of way, privileges, and other appurtenances thereof or thereunto belonging, as more fully described in said act, to which reference is hereby specially made; and

Whereas the said company, by said resolution of the board of directors, has made certain provisions for the payment of said bonds in principal and interest; has appointed the New Orleans Canal and Banking Company of this city its depositary to receive and disburse all sums appropriated for said purpose, and has authorized its said president to carry out said resolution by authentic act:

Now, therefore, in order to provide for the punctual payment of the interest on said bonds as the same shall become due on the first of June and December of each year and for the extinguishment of the whole of said bonded indebtedness, it is hereby covenanted, contracted, and agreed as follows by and between said New Orleans City Railroad Company and said Joseph A. Walker, herein stipulating and accepting for himself and all holders of said bonds, to wit:

That the New Orleans Canal and Banking Company of New Orleans is hereby recognized as and shall remain the duly constituted depositary of said company for the purpose of receiving and disbursing the funds appropriated to the retirement of said bonded debt and interest, and that there shall be deposited weekly with said depositary the sum of eleven hundred and twenty-five dollars to meet the payment of the interest coupons on said bonds as the same shall become due and for the retirement of said bonded debt, which said weekly deposits of eleven hundred and twenty-five dollars shall be continued until the said entire bonded debt and interest shall have been retired, and that the said sum thus deposited shall not be drawn out or appropriated to any other purpose, but is hereby irrevocably pledged to the purposes aforesaid.

Thus done and passed, in my office, at New Orleans, the
411 day, month, and year first above written, in the presence of Paul Carambat and David C. Labatt, competent witnesses, residing in this city, who sign these presents with the appearers and me, notary, after reading of the whole.

(Original signed)

F. WINTZ, *President.*
J. A. WALKER.
PAUL CARAMBAT.
DAVID C. LABATT.
N. B. TRIST,
Notary Public.

I hereby certify the above to be a true copy of the original on file in my notarial records, as witness my official seal and signature.

New Orleans, December 20th, 1882.

N. B. TRIST,
Notary Public.

412 (From Jewell's Digest.)

General Ordinances of the City of New Orleans Relative to Steam and Street Railroads.

SECTION I.—*Steam Railroads.*

Watchman with signal flag and red light, Sept., 1873, A. S. 2340.

Article 1. Be it ordained, etc., That it shall be the duty of the New Orleans, Jackson and Great Northern Railroad Company, the Pontchartrain Railroad Company, and the New Orleans, Mobile and Texas Railroad Company to station at each intersection of any street within the city of New Orleans on which street cars are running, at least two minutes before the approach of any of their trains, a watchman, who shall remain on the spot until after the passage of the train with a red flag in day-time and a red lantern at night time to signalize the approach of the train.

Penalty.

Art. 2. That for each and every contravention of this ordinance the respective company shall be liable to a fine of one hundred dollars, recoverable before a court of competent jurisdiction within the district in which the offense is committed.

Lines and levels of railroad tracks to be furnished by the city surveyor, February, 1876, A. S. 3397.

Art. 3. That it shall be unlawful for any railroad company running its tracks within the limits of the city of New Orleans to lay down new tracks or lower or raise the grade of any track now laid, being laid, or hereafter to be laid without first procuring lines and levels from the city surveyor of New Orleans for the proper construction of the same.

Penalty.

Art. 4. In case of any violation of the provisions of this
413 ordinance it shall be the duty of the administrator of improvements to cause said track or tracks to be immediately conformed to the proper grade or level of the streets or levees upon which they are laid, and in case the railroad company should refuse or neglect so to do when notified it shall be the duty of said administrator to execute the provisions of this ordinance and to use such means as may be necessary for said purpose.

Speed of railroad trains running along the river front, April, 1881, A. S. 6988.

Art. 5. That from and after this date all railroad companies are hereby prohibited from running their trains or engines or allowing the same to be run on the south side of Claiborne street or the river front at a greater speed than six miles per hour, and for any violation of the foregoing the company so violating the same shall be held liable to a fine of $100 for each and every offense, collectible before any court of competent jurisdiction.

To ring bells within city limits, October, 1881, A. S. 7360.

Art. 6. That it shall be the duty of the Chicago, St. Louis and New Orleans Railroad Co., the Pontchartrain Railroad Company, the Louisville and Nashville Railroad Company, "as reorganized;" Morgan's Louisiana and Texas Railroad Company, New Orleans, Spanish Fort and Lake Railroad Company, and New Orleans City Railroad Company, steam train, and all other railroads which may now or hereafter have the right to move their trains by steam-power on any of the streets of the city of New Orleans between Claiborne street and the Mississippi river to ring a bell at intervals within said limits.

Speed—penalty.

Art. 7. That it shall be unlawful for steam trains to run at a greater speed than six miles per hour or to announce their approach to curves or crossings within the limits of Claiborne street and the Mississippi river by whistle, except that the Louisville and Nashville Railroad Company shall signal their approach to the curve at the head of Elysian Fields street by whistle between St. Claude and Rampart streets also in cases of emergency, and any failure on the part of individuals to comply with the foregoing ordinance will subject them to a fine of twenty dollars or imprisonment for thirty days
414 for each offense, recoverable before the recorder wherein the offense was committed.

SECTION II.—*Street Railroads.*

To run cars all night—December, 1873, A. S. 2445—fare.

Art. 8. Be it ordained, etc., That the several street railroad companies in this city be, and are hereby, authorized to run their street

cars at no greater intervals than every half hour apart from 12 p. m. to 5 a. m., and that they are also authorized to charge during the hours above mentioned increased fare not exceeding the rate of twenty-five cents per passenger.

Speed at Canal-street crossings, January, 1874, A. S. 2472.

Art. 9. That it shall not be lawful for the several railroad companies of this city running their cars to and from Canal street, propelled by horse or mule power, to permit said cars to be moved at a greater rate of speed than a walk at all crossings on Canal street between the levee and Rampart street, under penalty of a fine of not greater than ten dollars for every such contravention, recoverable before any court of competent jurisdiction upon due proof thereof.

Sheds for starters, July, 1866, N. S. 202.

Art. 10. That permission be, and the same is hereby, granted to the New Orleans city railroad companies of the city to erect shelters for the starters of cars and for the turn-table men employed by said companies at any and all places where said starters and turn-table men are or may be stationed, provided said shelters be built according to plans and specifications to be furnished by the city surveyor.

Bells, June, 1861, ord. 5657.

Art. 11. That the city railroad companies shall, from and after the passage of this resolution, cause to be placed at the heads or necks of teams a number of bells sufficient to attract the attention of the public and thereby warning them of the approach of such teams and cars and of impending danger.

Certain persons excluded from the cars, November, 1875, A. S. 3308.

Art. 12. That from and after the adoption of this ordinance
415 it shall not be lawful for any person afflicted by any contagious or infectious disease or for any person who is intoxicated to enter any car within the limits of the city of New Orleans.

Car tracks not to be obstructed.

Art. 13. That it shall not be lawful for any person to place any obstruction on the track of any railroad located or running in or through the city of New Orleans or unnecessarily to interfere with or obstruct the free passage of any car or to endanger the safety of any car or any person in any car running in or through the said city of New Orleans.

Exception in favor of fire department.

Art. 14. It is understood, however, that the provisions of this section shall not in any way conflict with the privileges and right of way granted to fire-engines, hook-and-ladder trucks, wagons carrying Babcock fire extinguishers, and other vehicles belonging to the fire department.

Minors prohibited from hanging on the outside of cars.

Art. 15. That it shall be unlawful for the parents or guardians of any minor child to allow such child to hang or swing on the outside of any car of any railroad within the limits of the city of New Orleans while the same is in use or motion upon said roads.

R. R. companies and police to enforce this ordinance.

Art. 16. That it is hereby made the duty of the companies owning the aforesaid railroads, their employees, and the police of the city of New Orleans to secure the enforcement of the provisions of this ordinance.

Penalties.

Art. 17. That any person who shall be found guilty of a violation of any of the provisions of sections 1 and 2 of this ordinance before any of the police courts of this city shall be fined not less than $5 nor more than $25, and, in default of payment, imprisoned not more than five days nor less than one day, and that in any case of any violation of the provisions of the third section the minor child so offending shall be arrested and, upon conviction, sentenced to imprisonment for not less than twelve nor more than twenty-four hours in default of payment by the parent or guardian of said minor of a fine of not more than $5 nor less than $2 for each offense.

416 Right to use certain propelling cars, April, 1872, A. S. 1464.

Art. 18. That permission, revocable at the pleasure of the council, is hereby granted to any city railroad company to use the apparatus for propelling street cars of the Ammonia and Thermo-Specific Propelling Company, provided that the city shall not be held responsible for any damage that may be occasioned thereby.

417 *Index.*

	Page.
Agreement with city of New Orleans in reference to Lake railroad	128
Appendix	163
By-laws of New Orleans City and Lake Railroad Company	16
Charter of New Orleans City and Lake Railroad Company	3
Charter of New Orleans City Railroad Company	20
Contract amending sale of October 2nd, 1879	65
Contract between city of New Orleans and J. B. Slawson for Magazine, Camp, Prytania, and Rampart and Dauphine Streets railroads	68
Contract between same for Canal-Street and Metairie Ridge railroads	75
Contract between same for Esplanade-Street railroad	82
Change of contract for Magazine and Camp Streets railroads	88
Change of contract for Magazine, Camp, and Rampart Streets lines	90
Contract between city of New Orleans and New Orleans City Railroad Company for railroad on New Levee street	96
Contract amendatory of same	112
Contract with St. Charles Street Railroad Company	115
Consolidation with New Orleans, Metairie and Lake Railroad Company	131
Contract with city of New Orleans for Prytania-Street Extension	138
Contract with city of New Orleans for Magazine-Street Extension	149
Contract providing for payment of mortgage bonds	175
Grant from city of New Orleans for right of way on Esplanade street from Rampart to Levee	114

Page.

General ordinances of the city of New Orleans:

First—Steam railroads ... 178
Second—Street railroads ... 180
Incorporation of New Orleans, Metairie and Lake Railroad Company ... 135
Lease of portion of Greenwood cemetery ... 123
Meeting of stockholders of New Orleans City Railroad Company ... 28
Mortgage from New Orleans City Railroad Company to Joseph A. Walker ... 163
Officers of New Orleans City and Lake Railroad Company ... 2
Ordinances and contracts relating to Lake railroad ... 120

Ordinances of the city of New Orleans:

No. 4364, O. S., providing for sale of right of way on Magazine and other streets ... 102
No. 4744, O. S., amending No. 4364, O. S. ... 104
No. 4735, O. S., amending No. 4364, O. S. ... 104
No. 4766, O. S., providing for sale agreeably to Nos. 4364 and 4474, O. S. ... 105
No. 4945, O. S., approving sale made under Nos. 4364, 4474, 4735, and 4766, O. S. ... 54
418 No. 5119, O. S., providing for sale of right of way on Esplanade street ... 105
No. 5122, O. S., providing for sale of right of way on Canal street and Metairie ridge ... 105
No. 5209, O. S., providing for change of contract of February 7th, 1860 ... 106
No. 5230, O. S., providing for change of contract of February 7th, 1860 ... 88
No. 5244, O. S., approving sale made under Nos. 5119 and 5122, O. S. ... 54
No. 5573, O. S., providing for change of contract of February 7th, 1860 ... 90
No. 5778, O. S., providing for change of rails on Metairie and Barracks roads ... 106
No. 5825, O. S., amending No. 5778, O. S. ... 92
No. 5861, O. S., allowing substitution of N. O. C. R. R. Co. to rights of J. B. Slawson and others ... 94
No. 6033, O. S., providing for sale of right of way on New Levee street ... 97
No. 6053, O. S., approving sale made under No. 6033, O. S. ... 98
No. 6322, O. S., amending contract of May 6th, 1862 ... 106
No. 6405, O. S., amending No. 6322, O. S. ... 107
No. 67, N. S., amending No. 6332, O. S. ... 107
No. 144, N. S., providing for opening of certain streets ... 108
No. 247, N. S., providing for opening of certain streets ... 108
No. 490, N. S., extending contract for railroad on Levee street ... 108
No. 606, N. S., amending No. 5573, O. S. ... 113
No. 1425, N. S., changing tracks on Canal street ... 109
No. 1506, N. S. extending contract for railroad on Levee street ... 109
No. 471, A. S., privilege to lay track on Toledano street ... 161
No. 1682, A. S., permission for railroad to slaughter-house ... 161
No. 2518, A. S., granting right of way on Esplanade street from Rampart to Levee ... 54
No. 3565, A. S., allowing use of dummies on Canal street ... 120
No. 3617, A. S., establishing stand for Lake cars on Canal street ... 120
No. 4566, A. S., providing for agreement as to Lake railroad ... 130
No. 4968, A. S., providing for sale of franchises ... 48
No. 5020, A. S., amending No. 4968, A. S. ... 48
No. 6109, A. S., amending No. 4968, A. S. ... 62
No. 6111, A. S., regulating bids for franchises ... 62
No. 6112, A. S., appropriating funds derived from sale of franchises ... 63
No. 6148, A. S., accepting bid of New Orleans City Railroad Company ... 63
No. 6160, A. S., confirming sale to New Orleans City Railroad Company ... 64
No. 6316, A. S., granting use of lake front of revetment levee ... 120
No. 6528, A. S., revoking No. 3617, A. S. ... 121
No. 6570, A. S., amending No. 6528, A. S. ... 122
No. 6731, A. S., granting permission to extend tracks to neutral ground on Basin street ... 123
No. 6891, A. S., repealing No. 6528, A. S. ... 130
No. 7127, A. S., amending sale of October 2nd, 1879 ... 65
No. 7725, A. S., providing for track to fair grounds ... 161
No. 54, C. S., granting Prytania-Street Extension ... 139
419 No. 217, C. S., amending No. 54, C. S. ... 148
No. 248, C. S., granting Magazine-Street Extension ... 150

Page.
No. 276, C. S., amending No. 248, C. S. ---- 155
Resolutions of board of directors providing for purchase of franchises ---- 61
Resolutions approving purchase of franchises ---- ...as of
Right of passage from Charles Caffin to New Orleans City Railroad Company ... the ori
Sale and transfer from New Orleans City Railroad Company to New Orleans City and Lake Railroad Company ---- 31
Sale of right of way and franchises from city of New Orleans to New Orleans City Railroad Company ---- 47
Substitution of New Orleans City Railroad Company to rights of J. B. Slawson and others ---- 93
Sundry grants from city of New Orleans ---- 161
Station rules governing employees ---- 183

Errata.

On page 48 for "4969" read "4968" on sixth line from the bottom.

On page 108 for "old series" read "new series" on fourteenth line from bottom.

On page 130 for "5891" read "6891" on eighth line from bottom.

420 *Proceedings Had in the Supreme Court of the State of Louisiana.*

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE R. R. Co. } No. 10514.

Transcript of appeal. Filed January 15th, 1890.

421 (Copy.)

Motion for Time and Certificate. Filed Jan. 9th, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 10514.

On motion of Buck, Dinkelspiel & Hart, attorneys for defendant and appellant, and on producing to the court the sworn statement of the clerk of the civil district court for the parish of Orleans, showing the inability to complete the transcript of appeal in this case in time for the return day fixed by order of that court, it is ordered by the court that a delay of six days from this date be allowed mover in which to file the transcript of appeal in this case.

Certificate.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 27049.

Edgar A. Luminais, clerk of the civil district court for the parish of Orleans, being duly sworn, deposes and says that the transcript

of appeal in the above entitled and numbered cause, returnable to the supreme court of the State of Louisiana on the 1st Monday of January, 1890, has not been completed for the reason that the transcript of appeal will be a voluminous one, and that an additional delay of six days from this date is necessary to enable him to complete the same.

(Signed) E. A. LUMINAIS, *Clerk.*

Sworn to and subscribed before me this 9th day of January, A. D. 1890.

(Signed) E. E. O'BRIEN,
Dep'ty Clerk of the Civil District Court for the Parish of Orleans.

422 *Motion for Time and Order.*

Extract from the Minutes of Thursday, January 9th, 1890.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poche, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 10514.

On motion of J. C. Gilmore, on behalf of Buck, Dinkelspiel and Hart, and upon exhibiting the certificate of the clerk of the lower court, and on suggesting to the court that transcript of appeal had not been completed, it is ordered that the return day for the filing of said transcript be extended for six days.

Cause Submitted.

Extract from the Minutes of Thursday, March 20th, 1890.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poche, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } 10514.

423 This case was called for trial, and after hearing argument of Sam. L. Gilmore, for plaintiff and appellee, same was submitted.

Reasons for Judgment. Filed April 7th, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. CO. } No. 10514.

The opinion of the court was delivered by Mr. Chief Justice Bermudez in the following words, to wit:

The object of this suit is to compel by mandamus the defendant company, in specific performance of alleged contracts, to put and keep in proper condition the streets, &c., through which its tracks pass within city limits.

In its return the Co. substantially pleaded that the allegations of the petition are too vague, general, and indefinite; that the action is premature; that no proper demand was made to authorize the suit; that the act (No. 133 of 1888) under which the action is brought is unconstitutional for several reasons, one of which is that it impairs the obligations of the contracts between the parties; that the charges preferred are unfounded; that it has always complied with all its obligations and continues to do so, &c.

From a judgment overruling the preliminary defenses and making the mandamus peremptory for specified purposes the company appeals.

In relation to the exceptions it suffices to say that the petition clearly discloses a valid cause of action; that there was a
424 proper demand for compliance; that the suit itself is a putting in default, if any was necessary; that the statute attacked is not special or local but general and remedial only; that it divests no vested right and impairs the obligation of no contract. It has already been invoked and twice enforced. State *ex rel.* New Orleans *vs.* New Orleans & N. E. R. R. Co., 42 A., p. —.

So that the contention is reduced to an interpretation of the direct and assumed contracts between the parties.

Under the terms of the contracts whereby the right of way was granted the substantial obligation assumed by the purchaser, and which is of moment in this controversy, is that the company would keep in good order and condition, from curb to curb, the streets and bridges through which the tracks pass.

The contention is not whether the company is or not bound to keep in such condition the streets, etc., on which its tracks pass, but rather whether the company is or not under such obligations as to streets, etc., on which its tracks do not pass and which border on the sides of the middle or neutral ground which separates them and on which its tracks are laid, such as the streets alongside the strip of ground between them on Canal, Rampart, and Esplanade streets in this city.

The theory on which this action is predicated rests on the assumption that the neutral or middle ground forms part of the street and that the tracks of the company having been laid on it they pass through the street itself; but the theory at once explodes when it is

considered that the strip of ground does not form part of the street proper.

A street is a space dedicated to public use for the passage
425 and circulation thereon of ordinary driven vehicles or animals in cities or towns.

Such was surely the meaning attached to the word before the time when street cars were permitted to be run on the streets, and such it must have been, in the contemplation of the parties, when they entered into the contracts propounded upon.

Indeed, the neutral or middle ground is not only not used, but is prohibited from being used as a street, and, not being used thus, it cannot be treated practically as a part of the streets between which it extends.

See act 73 of 1876; 13 A., 320; 26 A., 362; 35 A., 1067; 36 A., 547; 41 A., p. —.

The evidence shows that in the exercise of the right of way purchased the company did not lay its tracks on the side streets themselves, but on the space dividing them, which does not form part of them as a thoroughfare for the passage and circulation of ordinary carriages and vehicles.

It also establishes that the city has never opposed such use of such ground and has never called on the company to do any work on such double streets, but that such work has always been attended to by the city at its own expense.

The terms employed are clear and free from doubt. Were they obscure or equivocal the want of necessary explanation on the part of the obligee, who impose the conditions which were accepted, should not render the burden more onerous, but the construction most favorable to the obligor should be adopted; the more so when the mode of execution justifies this course.

R. C. C., 1956, 1958; C. N., 1162.

A careful reading of the stipulation, coupled with the consideration of the interpretation placed upon it by the parties, forces the irresistible conclusion that the space which, in their intent,
426 the company was to keep in good order and condition is the route through and on which its tracks would pass, extending from curb to curb or external boundary.

No other reasonable signification can be placed on the agreement.

It is therefore apparent that the company is not bound, under its tenor, to perform any work beyond the curbs or lines within which are comprised the neutral or middle ground or strips of land between the side streets on which its tracks have been laid.

The proof shows in what respects the company has been derelict as to ordinary streets and to some extent as to intersections, bridges, and neutral grounds which constitute the route through and on which its tracks pass.

The judgment of the lower court is correct, unless that portion which makes the mandamus peremptory as to the streets or thoroughfares which extend on the sides and beyond the curbs of the strips of ground in question.

It is therefore ordered and decreed that the judgment appealed from be amended by striking therefrom that portion which imposes on the defendant company the obligation of keeping in good order and condition the streets or roadways on the sides of the middle or neutral grounds on Canal, Rampart, and Esplanade streets, in this city, and by rejecting the demands in that respect, and that, thus amended, same judgment be affirmed at appellee's cost.

427 *Judgment and Decree.*

Extract from the Minutes of Monday, April 7th, 1890.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poche, Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, associate justices.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY AND LAKE R. R. Co. } No. 10514.

It is ordered & decreed that the judgment appealed from be amended by striking therefrom that portion which imposes on the defendant company the obligation of keeping in good order and condition the streets and roadways on the sides of the middle or neutral grounds on Canal, Rampart, and Esplanade streets, in this city, and by rejecting the demand in that respect, and that, thus amended, said judgment be affirmed at appellee's cost.

(Copy.)

Petition for Rehearing. Filed April 14th, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 10514.

To the honorable the chief justice and associate justices of the supreme court of Louisiana:

The petition of The New Orleans City & Lake Railroad Company, the defendant and appellant herein, for a rehearing re-
428 spectfully represents unto your honors that the court erred in holding that as to this defendant act No. 133 of 1888 was a valid, constitutional, and legal statute for the following reasons:

The contracts between the city of New Orleans and the defendant, the specific compliance with portions of which is sought by this suit, contain a method of procedure allowable in the event of default.

This form of procedure guaranteed to the defendant certain rights which were taken away by the statute of 1888. The return in this case on the merits of relator's demand alleges, among other things, that the failure of respondent to comply with some of the demands made upon it by the city of New Orleans is due to the fact that the

city had violated in other particulars the contract obligations with it, and that for such violation it had a claim against the city for damages.

The effect of the statute of 1888 prevents this defendant from setting up this claim in reconvention and prevents it from having a trial by jury. As to the first point, the statute impairs the obligation of the contract between the city and the company, for no claim that the city would have against the company under the terms of the contract, not being due to it as part of its revenue, could be offset by any claim the company might have.

By being deprived of the right to reconvene the company is condemned to comply with its obligations to the city, while through another and a different suit its claim against the city could not be enforcible, and in the present attitude of the city's financial affairs would be practically uncollectible.

The right of the company to claim damages from the city
429 is as much its property as are its lands and cars, and the State has no more right to deprive it of the one than it has of the other.

Therefore this petitioner prays that after due consideration your honors may be pleased to grant it a rehearing, and that thereafter and in due course of law a decree be entered reversing the judgment of the lower court and declaring that as to this defendant act 133 of 1888, impairing the obligations of its contract with the city, is invalid and unconstitutional; and, as in duty bound, petitioner will ever pray, etc.

(Signed) BUCK, DINKELSPIEL & HART, *Att'ys.*

(Copy.)

Motion for Time & Order. Filed April 14th, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY AND LAKE R. R. CO. } No. 10514.

On motion of Buck, Dinkelspiel & Hart, attorneys for defendant and appellant, and on suggesting to the court that they have this day filed an application for a rehearing in this case and desire time within which to elaborate the points thereof:

It is ordered by the court that movers be allowed a delay of 8 days within which to prepare and file a brief in support of their application for a rehearing in this case.

430 *Motion for Time and Order. Filed April 19th*, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. CO. } No. 10514.

To the honorable the chief justice and associate justices of the supreme court of Louisiana:

The petition of The N. O. City and Lake R. R. Co., the defendant

and appellant herein, with respect represents that, as appears from the written consent of the appellee herein, its counsel consent to an extension of the time heretofore allowed by the court to petitioner for filing briefs in support of its application for rehearing, herein on file.

Wherefore it prays that an order may be herein entered granting them one week's additional time from this date within which to file briefs in support of their application for rehearing, already upon file, and for general relief.

(Signed) BUCK, DINKELSPIEL AND HART, *Att'ys.*

Consent.

On behalf of The City of New Orleans, the relator and appellee in this case, I consent to one week's additional time being allowed the defendant and appellant for filing briefs in support of its application for rehearing in this cause.

New Orleans, April —, 1890.

(Signed) SAM'L L. GILMORE,
Assistant City Attorney.

431 *Rehearing Refused.*

Extract from the Minutes of Saturday, May 24th, 1890.

The court was duly opened pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Charles E. Fenner, Lynn B. Watkins, Samuel D. McEnery, Joseph A. Breaux, associate justices.

By the court on application for rehearing.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 10514.

Rehearing refused.

(Copy.)

Petition for Writ of Error Filed June 2nd, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. Co. } No. 10514.

To the honorable The chief justice of the supreme court of Louisiana:

The petition of The New Orleans City & Lake R. R. Co., the defendant herein, and cast in the final decree of this honorable court, with respect represents that it is informed and believes there is error to its prejudice in the final judgment herein rendered between the State of Louisiana on the relation of the City of New Orleans,
432 and that it is desirous of obtaining and prosecuting a writ of error to remove said judgment to the honorable the Supreme

Court of the United States, which has jurisdiction over this cause by reason of the fact that there was drawn in question in this case the validity of a statute of the State of Louisiana alleged to be repugnant to and in conflict with the Constitution of the United States, as will appear by reference to the answer of this defendant herein on file; that in said answer it is alleged that act No. 133 of the legislative session of the State of Louisiana of 1888, under which this action was brought, impairs the obligation of the contract between the city of New Orleans and this defendant, and therefore is violative of article one, section 10, No. one, of the Constitution of the United States, and article one, section 9, No. three, thereof, both of which were expressly plead- and invoked in protection of its rights under its contract with the city of New Orleans, as set forth in its said answer.

Wherefore petitioner prays that a writ of error be allowed to it from the final judgment and decree of this honorable court, and that same be returnable to the honorable the Supreme Court of the United States at its next term, according to law, and that said writ operate as a supersedeas upon petitioner giving bond in such sum as the court may fix; and this petitioner further prays that the City of New Orleans be cited to answer said writ under the law in such case made and provided.

And, as in duty bound, this petitioner will ever pray, etc.

(Signed) BUCK, DINKELSPIEL AND HART, *Att'ys.*

433 *Affidavit.*

W. O. Hart, being duly sworn, deposes and says that he is one of the counsel of the New Orleans City and Lake Railroad Company in this case, and that the allegations of the foregoing petition are true and correct.

(Signed) W. O. HART.

Sworn to and subscribed before me this May 26th, 1890.

(Signed) JAS. N. WOLFSON, *Not. Pub.*

(Copy.)

Order Granting Writ of Error. Filed June 2nd, 1890.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
N. O. CITY & LAKE R. R. CO. } No. 10514.

On application for writ of error.

The writ is allowed on pl'ff therein furnishing bond and security conditioned as the law directs, in the sum of one thousand dollars, returnable to the U. S. Supreme Court on or before the October term of the present year, 1890.

It is not considered that the writ should operate as a supersedeas. Practically, the proceeding is one for a mandatory injunction to

compel the defendant company to perform work which it was averred it was bound to do under its contracts with the city of New Orleans.

Previous to 1888 the suit could not have been brought in this form; it had to be carried on *via ordinaria;* but in the year named the Legislature, to afford prompt relief in such cases of urgency,
434 authorized summary proceedings as have been brought in this instance.

The proceeding is not strictly a mandamus proceeding. It is more of an injunction mandatory in character than a mandamus.

There was little or no contention as to the obligation of the R. R. Co. to do the work asked to be performed, except as to that which the company was averred to be bound to do on the thoroughfares, on the sides of the middle grounds separating them.

The judgment of the supreme court of La. reversed that of the lower court which condemned the company to work on those thoroughfares and affirmed in other respects.

For my own satisfaction I have requested a report from the city surveyor showing the cost of the work the performance of which would be stopped by a supersedeas proceeding, and he says that it would amount to ninety thousand, and adds fifteen thousand dollars, making one hundred and five thousand dollars, $105,000.

The liability of the defendant company for the work to be done is unquestionable, and the inability of the city of New Orleans to have it done in case the company does not is indisputable, and the work is a public necessity.

The injury which would be suffered by the city of New Orleans and the public in case the work is not done would be irreparable and incalculable.

I do not think that in a case of this character the law allows that writ shall operate as a supersedeas, and therefore decline to say that it shall so operate.

Should superior authority, however, think differently, I think that the bond required should not be for less than one hundred and five thousand dollars.

I append the surveyor's report as part of my present reasons.

New Orleans, June 2nd, 1890.

(Signed) E. BERMUDEZ.

Chief Justice of the Supreme Court of the State of Louisiana.

435

CITY SURVEYOR'S OFFICE,
ROOM NO. 19, CITY HALL,
NEW ORLEANS, *May* 31*st*, 1890.

Mr. S. E. Gilmore, assist. city attorney, 37 Camp street.

SIR: I estimate the cost of the repairs recited in the judgment of division B, civil district court of the city of New Orleans, to be made by the New Orleans City & Lake railroad on the following lines, viz:

Levee & Barracks line,
Camp & Prytania line,
Camp & Magazine line,

Rampart & Dauphine line,
Canal, Metairie R'd & Bayou St. John line,
Esplanade & Bayou Bridge line,
N. O. City & Lake Railroad line,
Extension of the Camp & Prytania line,
Extension of the Camp & Magazine line,
to be equal to the sum of ninety thousand ($90,000) dollars.

I further estimate that if the work is delayed for three years, or during the probable pendency of the suit in the United States Supreme Court, its cost will be increased by the sum of fifteen thousand ($15,000) dollars.

Respectfully,

(Signed) B. M. HARROD,
City Surveyor.

436 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the chief justice of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said case of The State of Louisiana on the relation of the City of New Orleans *versus* The New Orleans City and Lake Railroad Company, before you or some of you, being the highest court of law or equity of the said State in which a decision could be *laid* in the said suit between The State of Louisiana on the relation of the City of New Orleans and The New Orleans City and Lake Railroad Company, No. 10514 of the docket of the supreme court of Louisiana, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said New Orleans City and Lake Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said

437

Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the second day of June, in the year of our Lord one thousand eight hundred and ninety.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.

Allowed by—
(Signed) E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

Endorsed: State *ex rel.* City of New Orleans *versus* N. O. City & Lake R. R. Co. No. 10514. Filed June 9th, 1890. (Signed) Joseph F. Poche, clerk.

438 Know all men by these presents that we, The New Orleans City & Lake Railroad Company (plaintiff in error), of which Joseph A. Walker is president, as principal, and Joseph A. Walker, as surety, are held and firmly bound unto The City of New Orleans, defendant in error, in the full sum of one thousand dollars, to be paid to the said City of New Orleans, her certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, in the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, in a suit depending in said supreme court, wherein The State of Louisiana on the relation of the City of New Orleans is plaintiff and The New Orleans City & Lake Railroad Company is defendant, judgment was rendered against said City & Lake Railroad Company, defendant, and the said defendant having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans, suing *ex rel.* the State of Louisiana, citing and admonishing said City of New Orleans to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above is such that if the said New Orleans City & Lake Railroad Company shall prosecute its writ
439 to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOSEPH A. WALKER, *President.*
JOSEPH A. WALKER.

Sealed and delivered in the presence of—
—— ——.

This bond approved and permitted to be filed without prejudice to the right of plaintiff in error to apply to the Supreme Court of the United States or a justice thereof to have the writ herein operate a supersedeas. In that event to file and substitute the proper bond to that effect.

(Signed) E. BERMUDEZ,
Chief Justice.

UNITED STATES OF AMERICA, *ss:*

Personally appeared Joseph A. Walker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of one thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) J. A. WALKER.

Subscribed and sworn before me this 3rd day of June, 1890.

(Signed) W. O. HART, *Not. Pub.*

Endorsed: State *ex rel.* City of New Orleans *vs.* New Orleans City & Lake Railroad Company. No. 10514. Bond for writ of error. Filed June 3rd, 1890. (Signed) L. M. Martin, d'y clerk.

440 Know all men by these presents that we, The New Orleans City & Lake Railroad Company, as principal, and Joseph A. Walker, as surety, are held and firmly bound unto the City of New Orleans in the full and just sum of one hundred and twenty-five thousand dollars, to be paid to the said City of New Orleans, — certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of June, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately the supreme court of the State of Louisiana, in a suit depending in said court, wherein The State of Louisiana on the relation of the City of New Orleans — plaintiff and The New Orleans City & Lake Railroad Company, defendant, judgment was rendered against the said New Orleans City & Lake Railroad Company, defendant, and the said New Orleans City & Lake Railroad Company having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said City of New Orleans, citing and admonishing said city to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said New Orleans City & Lake Railroad Company shall prosecute said writ to effect and answer all damages and cost if it fail to

441 make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. A. WALKER, *President.*
J. A. WALKER.

Sealed and delivered in the presence of—
W. O. HART.

STATE OF LOUISIANA, }
Parish of Orleans. }

Personally appeared Joseph A. Walker, who, being duly sworn, deposes and says that he is the surety on the written bond; that he resides in the city of New Orleans, State of Louisiana, and is worth the full sum of one hundred and twenty-five thousand dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) J. A. WALKER.

Subscribed and sworn before me this 3rd day of June, 1890.

(Signed) W. O. HART,
Notary Public in and for the Parish of Orleans,
State of Louisiana.

Endorsed: Supreme court of Louisiana. State *ex rel.* City of New Orleans *vs.* New Orleans City & Lake Railroad Company. No. 10514. Bond for writ of error. Filed June 3rd, 1890. (Signed) J. F. Poche, clerk.

442 Supreme Court.

STATE *ex Rel.* NEW ORLEANS
vs.
N. O. CITY & LAKE RAILROAD COMPANY. } No. 10514.

As I have declined allowing the writ of error herein to operate as a supersedeas, I cannot approve or accept the bond tendered for $125,000 by the plaintiff in error. I could not do so without testing the sufficiency of the surety contradictorily with the city, even if I thought the writ could or should so operate.

New Orleans, June 3rd, 1890.

(Signed) E. BERMUDEZ,
Chief Justice.

443 To the Honorable L. Q. C. Lamar, associate justice of the Supreme Court of the United States:

The petition of The New Orleans City and Lake Railroad Company, a legal corporation created under the laws of the State of Louisiana and having its domicile at the city of New Orleans, in said State, and the defendant in the suit entitled "The State of Louisiana on the Relation of the City of New Orleans *vs.* The New Orleans City and Lake Railroad Company," No. 27049, division

"B," on the docket of the civil district court for the parish of Orleans and State of Louisiana (a court of general jurisdiction), unto your honor most humbly representeth—

That in said suit, in its answer to the demand of the relator (or plaintiff), petitioner specially set up that the law under which the proceeding in that court was based impaired the obligation of the contracts between the city of New Orleans and this petitioner, and was therefore violative of article one, section nine, number three, and article one, section ten, number one, of the Constitution of the United States.

That said court decided in favor of the validity of said law, and therefore and as authorized by the laws of said State of Louisiana your petitioner applied for and obtained a suspensive appeal from the judgment of said civil district court to the supreme court of Louisiana, where said cause, entitled as in the lower court, bore the No. 10514 of the docket, and where, after due hearing, the judgment of said civil district court was substantially affirmed and said statute, the validity of which was drawn in question as aforesaid,
444 declared not to impair the obligation of the contracts between this petitioner and the city of New Orleans.

That your petitioner duly applied to said supreme court of Louisiana, as is allowed under the laws of Louisiana, for a rehearing of said cause, which was denied; and, for greater certainty, this petitioner hereto annexes as part hereof duly certified copies of the pleadings, opinions, and judgments of said civil district court and said supreme court.

That the supreme court of Louisiana is the court of last resort in that State and the highest court whose opinion could be had upon any subject-matter pending in any of its courts.

That immediately upon the refusal by said supreme court of Louisiana of the rehearing asked for by this petitioner it applied to the chief justice thereof for a writ of error to remove said cause into the honorable the Supreme Court of the United States, alleging that said Court had jurisdiction of the cause by reason of there being drawn in question the validity of a State statute because repugnant to the Constitution of the United States and a decision of the State court affirming the validity of the statute.

That a writ of error was prayed for with supersedeas; that said writ as prayed for was refused, but a writ not to operate as a supersedeas allowed, though in so refusing the one asked for by petitioner and allowing one not asked for the chief justice decided that should a writ of error with supersedeas issue a bond of one hundred and five thousand dollars would be required; that thereupon this
445 petitioner presented to said chief justice in due form of law a bond in the penal sum of one hundred and twenty-five thousand dollars in favor of the city of New Orleans, the successful party in said suit, with good and solvent surety thereon, who had justified according to law, and renewed its demand for a writ of error with supersedeas and for the approval of said bond, which demand was refused.

And for greater certainty this petitioner now annexes duly certi-

fied copies of its petition for a writ of error, with supersedeas, the reasons of the chief justice refusing same as prayed for, and the aforesaid bond, with the reasons refusing its approval.

That this petitioner is entitled to a writ of error to remove the aforesaid cause into the honorable the Supreme Court of the United States and to have same operate as a supersedeas, for, otherwise, any relief that it might ultimately obtain at the hands of the Supreme Court of the United States would be barren of benefit; that long before said writ of error could be heard and determined in said court the judgment of the plaintiff could be executed in its entirety, and should, on final hearing, the decree of the supreme court of Louisiana and of the aforesaid civil district court be reversed, owing to the peculiar situation of the financial affairs of the city of New Orleans, this petitioner would be unable to realize or recover from the city of New Orleans any damages it might have suffered by reason of the execution of said aforesaid judgment.

That the statute of the State of Louisiana relied upon in the aforesaid cause is act No. 133 of the acts of the General Assembly of 1888, and a duly authenticated copy of same is presented with and made part of this petition.

446 That said statute is far-reaching in its terms, authorizing, under certain circumstances, as did the judgment of said civil district court, in that respect affirmed by the supreme court, the sheriff to take possession of the property of your petitioner, which would be to its great and irreparable injury.

That one — the grounds relied on in support of the plea that the said statute impairs the obligations of the contract between the petitioner and the city of New Orleans is the mode of executing judgments which it provides, and the refusal to allow a writ of error in operating as a supersedeas practically prejudices the issues and deprives petitioner of all benefits from the writ.

Wherefore, the premises considered, this petitioner prays that it may please your honor to issue a writ of error, to operate as a supersedeas, directed to the chief justice of the supreme court of Louisiana, to send up to the Supreme Court of the United States, at the time of its next session, a copy of the record and proceedings in the aforementioned entitled and numbered cause, to the end that justice may be meted out to this petitioner, and that said chief justice be ordered to accept the bond heretofore tendered and approve same after due examination.

And, as in duty bound, your petitioner will ever pray, etc.

(Signed) CHAS. F. BUCK, *Of Counsel.*

Jos. A. Walker, the president of the New Orleans City and Lake Railroad Company, and Charles F. Buck, its counsel, being
447 each duly sworn, did depose and say that the allegations of the foregoing petition are true and correct.

(Signed) J. A. WALKER, *Pres't.*
CHAS. F. BUCK.

Sworn to and subscribed before me this June 12th, 1890.

W. O. HART,
Notary Public.

Endorsed: In the matter of the New Orleans City and Lake Railroad Company praying for a writ of error with supersedeas. No. 10514. Filed June 19th, 1890. Joseph F. Poche, clerk.

448 *Order.*

Supreme Court of the United States.

La CHAMBERS,
WASHINGTON, D. C., *June 16th*, 1890.

On reading the within petition and the record in the case submitted to me, it is ordered that the writ of error allowed by the chief justice of the supreme court of Louisiana shall operate as a supersedeas on plaintiff in error giving and filing a bond with good and solvent security, conditioned as the law directs, in the sum of one hundred and fifty thousand ($150,000) dollars, said bond to be approved by the honorable the chief justice of the supreme court of Louisiana, or, in his absence, by any of the associates justice of said court.

(Signed) L. Q. C. LAMAR,
Associate Justice of the Supreme Court of the United States.

449 UNITED STATES OF AMERICA:

Know all men by these presents that we, the New Orleans City and Lake Railroad Company, as principal, through Jos. A. Walker, president, and Joseph A. Walker, to the amount of fifty thousand dollars; Chas. F. Buck, to the amount of thirty-five thousand dollars; R. M. O'Brien, to the amount of twenty-five thousand dollars; E. J. Demorest, to the amount of twenty-five thousand dollars, and H. Gally, in the amount of fifteen thousand dollars, as sureties, each in the amount stated, are held and firmly bound, jointly and severally, unto the City of New Orleans in the sum of one hundred and fifty thousand dollars, lawful money of the United States of America, to be paid to the said City of New Orleans, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 21st day of June, in the year of our Lord eighteen hundred and ninety.

Whereas the said New Orleans City and Lake Railroad Company having heretofore, to wit, on the 2nd day of June, 1890, obtained a writ of error to the Supreme Court of the United States from and to reverse the decree rendered on the 24th day of May, 1890, by the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, in the suit of State of Louisiana on the relation of the City of Orleans *versus* The New Orleans City and Lake Railroad Company, No. 10514 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden New Orleans City and Lake Railroad Co. shall *present* its

said writ of error to effect and shall answer all damages and
450 costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) J. A. WALKER, *President.*

J. A. WALKER, $50,000.
CHAS. F. BUCK, $35,000.
R. M. O'BRIEN, $25,000.
E. J. DEMOREST, $25,000.
W. GALLY, $15,000.

Signed, sealed, and delivered in the presence of—

—— ——.

Order.

The proof adduced satisfies me that the sureties are good and solvent for the amount for which they respectively serve, and on that ground the bond offered is accepted.

(Signed) E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

New Orleans, July 3rd, 1890.

Endorsed: Supreme court of Louisiana. State *ex rel.* City of New Orleans *vs.* New Orleans City & Lake R. R. Co. No. 10514. Bond for appeal. Filed June 21st, 1890. (Signed) Joseph F. Poche, clerk.

451 UNITED STATES OF AMERICA, }
District of Louisiana. }

Personally appeared Joseph A. Walker, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans and is worth the full sum of fifty thousand ($50,000) dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) J. A. WALKER.

Subscribed and sworn before me this 21st day of June, 1890.

(Signed) JOSEPH F. POCHE,
Clerk Supreme Court of La.

Chas. F. Buck, duly sworn, deposes and says that he resides in the city of New Orleans and is worth the sum of thirty-five thousand dollars over and above his debts and liabilities in property exempt from execution.

(Signed) CHAS. F. BUCK.

Sworn to and subscribed before me this 21 day of June, 1890.

(Signed) JOSEPH F. POCHE, *Clerk.*

R. M. O'Brien, duly sworn before the undersigned, deposes and says that he resides in the city of New Orleans and is worth the full sum of twenty-five thousand dollars ($25,000) over and above all his debts and liabilities and property exempt from execution.

(Signed) R. M. O'BRIEN.

Sworn to and subscribed before me this 21st day of June, 1890.
(Signed) JOSEPH F. POCHE, *Clerk.*

452 E. J. Demorest, duly sworn, deposes and says that he resides in the city of New Orleans and is worth the full sum of twenty-five thousand dollars ($25,000) over and above all his debts and liabilities and property exempt from execution.
(Signed) E. J. DEMOREST.

Sworn to and subscribed before me this 21st day of June, 1890.
(Signed) JOSEPH F. POCHE, *Clerk.*

H. Gally, duly sworn, deposes and says that he resides in the city of New Orleans and is worth the full sum of fifteen thousand dollars over and above his debts and liabilities and property exempt from execution.
(Signed) H. GALLY.

Sworn to and subscribed before me this 21st day of June, 1890.
(Signed) JOSEPH F. POCHE, *Clerk.*

453 Supreme Court of Louisiana.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY AND LAKE RAILROAD COMPANY. } No. 10514.

Testimony.

R. M. O'Brien, page 1 269
H. Gally, page 5 272
E. J. Demorest, page 7 273
H. Gally, recalled, page 11 276
Jos. A. Walker, page 12 276
Chas. F. Buck, page 21 302
Documents "A" and "B," offered in evidence on page 18, annexed 305

454 Supreme Court of La.

STATE *ex Rel.* CITY OF NEW ORLEANS
vs.
NEW ORLEANS CITY & LAKE R'Y CO. } No. 10514.

Testimony taken in behalf of the City of New Orleans by consent, in the clerk's office of the supreme court of Louisiana, June 21st, 1890.

Present: S. L. Gilmore, Esq., for plaintiff; C. F. Buck, for defendant.

R. M. O'BRIEN, duly sworn, testified as follows:

Direct examination by Mr. GILMORE:

Q. Mr. O'Brien, you have signed the bond given by the defendant

in this case for a writ of error, to operate as a supersedeas, to the Supreme Court of the United States, for $25,000?

A. Yes, sir.

Q. What does your property consist of?

A. Real estate and stocks.

Q. Please mention some of the different pieces of real estate owned by you.

A. ¼ the Columbia Cotton Press.

Q. How much is that assessed for?

A. $75,000.

Q. Are there any mortgages or encumbrances in it?

A. No, sir.

Q. Is it leased to anybody?

A. Yes, sir.

455 Q. For how long?

A. One year.

Q. When does that lease expire?

A. One year from the first of September next.

Q. That will be the first of September, 1891?

A. Yes, sir.

Q. Can you specify any other piece of real estate owned by you?

A. No, sir; I have no other real estate.

Q. Are you surety on any other bond?

A. No, sir.

Q. Are you tutor of any minors?

A. Yes, sir; undertutor without bond.

Q. Isn't there a mortgage recorded against all your property as tutor?

A. No, sir; I am tutor without bond.

Q. Of whose children are you undertutor?

A. Of the children of Mrs. Richardson, my niece.

Q. Are you undertutor? Do you know the difference?

A. I don't know what you call it. Their father is the natural tutor and I am the other tutor. You can call it what you like.

Q. You furnished no bond?

A. No, sir.

Q. You have given no bond at all?

A. No, sir; no bond at all.

Q. Was the giving of bond dispensed with by family meeting?

A. I gave no bond; that's all I know about it.

Q. Please name some other real estate owned.

456 A. I told you I have no other.

Q. What does the balance of your property consist of?

A. Stocks of the city railroad & gas company.

Q. How many have you?

A. 250 of the gas Co. and 70 odd of the city railroad.

Q. That is the Jefferson City Gas Light Company?

A. No, sir.

Q. The New Orleans Gas Light Company?

A. Yes, sir.

(Signed) R. M. O'BRIEN.

457 H. GALLY, Esq., duly sworn, testified as follows:

Direct examination by Mr. GILMORE:

Q. Mr. Gally, you signed the bond in this case for a writ of error, to operate as a supersedeas, to the Supreme Court of the United States, for $15,000?

A. Yes, sir.

Q. In what does your property consist?

A. Real estate in this city and a plantation in the parish of Jefferson.

Q. What real estate have you in the parish?

A. The value?

Q. No; just mention what real estate you own and where it is situated.

A. On St. Peter's street.

Q. Between what streets?

A. Burgundy and Rampart.

Q. What does it consist of?

A. 4 dwellings.

Q. How much front have you altogether?

A. Altogether about 116 feet front.

Q. Between what streets did you say it was situated?

A. Rampart & Burgundy.

Q. How much revenue do you get from it?

A. About $1,200 revenue and I occupy one of the houses myself.

Q. How much is that property assessed at by the city?

A. $28,000; 14 to 12,000.

Q. Is that all the real estate you have in this city?

A. Yes, sir.

458 Q. Are you surety on any bonds of any kind?

A. No, sir.

Q. No bond at all?

A. No, sir.

Q. Are you tutor of any minors?

A. No, sir.

Q. You are not administrator or executor of any estate?

A. No, sir.

Q. You have signed no bonds whatever?

A. No, sir.

E. J. DEMOREST, Esq., duly sworn, testified as follows:

Direct examination by Mr. GILMORE:

Q. What does your property consist of, Mr. Demorest?

A. Real estate and stocks.

Q. What real estate have you?

A. I have real estate all over town.

Q. Just mention some of it, please.

A. I have got some up in the first, some in the second, some in the fourth, and some in the sixth districts.

Q. How much is it assessed for for city taxes?

A. Well, I have never made an estimate of the aggregate amount, but I suppose it is worth at least $25,000.

Q. You don't know how much it is assessed for?

A. My own property where I live is assessed for $12,000.

Q. Where is that?

A. Corner of Prytania and Peniston. Now, I have got another place up by the park that is worth about $3,000, and another place on Magazine street worth about $3,700; then I have got a
459 place down on Decatur street worth about $2,000, and another place down town, below the French market, worth about $2,000. I suppose I have real estate to the value of $20,000, anyhow.

Q. You don't know how much each piece is separately assessed at?

A. No, sir; in fact, I don't know what the assessments of some of them are. I bought them lately.

Q. Are they all free from encumbrances?

A. They are.

Q. Is that all you have?

A. No; I have got another place on Washington street; but the sale has not been consummated as yet.

Q. Is that property by the park improved?

A. There are some houses on it; there is half a square of ground there.

Q. That is, the nature of the houses?

A. They don't amount to much—old exposition buildings.

Q. Otherwise it is not improved?

A. No, sir.

Q. What stock do you hold?

A. Insurance stock in the New Orleans and Crescent Insurance Companies and the city railroad stock, and I have got gold-mine stock of the old Alexander Mining Company.

Q. Now how many shares have you of the city railroad stock?

A. I think 76.

Q. How many in the insurance company?

A. In the New Orleans, I think over a hundred.

Q. And how many in the other company?

A. In the Crescent I have only 10.

460 Q. Do you know what the market value of all that stock is?

A. The New Orleans is about $20 a share and the Crescent about $56.

Q. Is there any other corporation in which you hold stock?

A. Yes; in the Independent Oil Company.

Q. How much of that?

A. $100.

Q. Is that the market value?

A. Yes, sir.

Q. Is it at par?

A. Yes, sir.

Q. Are you on any bonds as surety?

A. No, sir.
Q. Have you signed any bonds in court?
A. No, sir.
Q. Are you tutor of any minors?
A. No, sir.
Q. Have you given a full statement of all you have?
A. No; the best of my recollection.
Q. You signed this bond in this case for a writ of error to the Supreme Court of the United States, to operate as a supersedeas, for how much?
A. $25,000.
(Signed) E. J. DEMOREST.

461 H. GALLY recalled.

Direct examination by Mr. GILMORE:

Q. Mr. Gally, is that property of yours on St. Peter's street encumbered in any way?
A. There is one mortgage on it only.
Q. How much is that mortgage?
A. $5,000; but I have $5,000 worth of stock in the city railroad.
Q. There is a mortgage of $5,000 on the property?
A. Yes, sir.
Q. Are all the taxes paid?
A. Yes, sir.
(Signed) W. GALLY.

Jos. A. WALKER, duly sworn, testified as follows:

Direct examination by Mr. GILMORE:

Q. You signed the bond in this case for how much, Mr. Walker?
A. $50,000.
Q. What does your property consist of?
A. Stocks and bonds and real estate.
Q. What real estate have you?
A. The Crescent Hall.
Q. How much is that assessed for?
A. $140,000.
Q. Is it free from all encumbrances?
A. Yes, sir.
Q. Is it leased to anybody or not? That would be an en-
462 cumbrance on it.
A. There are stores in it. Do you mean are the stores leased?
Q. Yes, sir.
A. Yes, sir; all the stores are leased.
Q. How many stores are there—5 or 6?
A. 6.
Q. They are all leased?
A. Yes, sir.
Q. For how long a term?

A. Most of them for 5 years; 2 of them expire on the 1st of October and there are 5 people after them. They were renewed the other day. Another one will expire next Oct., and there are three tenants after it.

Q. That will be 1890?

A. Yes, sir.

Q. How many leases expire this year?

A. None of them.

Q. 2 will expire, you say, but have been renewed for 5 years?

A. Yes, sir. I never had a store vacant there for a minute.

Q. That bar is leased?

A. I am lessor and lessee of the bar portion of it.

Q. I notice here on this certificate (document A) Lease, Jos. A. Walker & Co., granted in favor of Mrs. Cora Ann Cox, widow of Samuel B. Slocumb, for 5 years from the 1st of Oct.,1885?

A. That was when I was lessee. Since then I am lessor; bought the property since then. I bought it 5 years ago—in March, 1885.

463 Q. But this lease was made in Oct., 1885, so you couldn't have bought it in March, 1885?

A. When was it made?

Q. Oct., 1885.

A. Then I bought it the following March. I bought it 5 years ago last March.

Q. Now, there is recorded against that property in Oct., '85, a lease in favor of Mrs. Clara Ann Cox, widow of Samuel B. Slocomb, for 5 years; what does that mean?

A. It means that I leased the bar portion at that time, and after that, in March, 1886, I bought it.

Q. It must have been March, 1886. then and not March, 1885?

A. Maybe so. That would be 5 years, would'nt it?

Q. You say you leased it from Mrs. Slocomb?

A. Yes; she owned it then.

Q. You never made any lease to Mrs. Slocomb?

A. No; Mrs. Slocomb is dead. When I bought it I bought it from the heirs.

Q. Does that $140,000 include the furniture in the building or only the real estate?

A. That is the assessment on the real estate. I am assessed besides upon the contents, capital stock, and merchandise.

Q. How much is that portion of the Crescent Hall which you say is not leased worth?

A. I don't know. I am lessor and lessee; as lessee I carry on the business of the bar and billiard departments. Jos. A. Walker leases to J. A. Walker in order to keep my property account straight; that is the idea.

Q. Have you any other real estate?

464 A. Yes, sir.

Q. Where is that?

A. Corner of Second and St. Charles.

Q. How much is that assessed at?

A. $17,000.

Q. Are you on any bonds, Mr. Walker?

A. No; once in a while I sign bonds for one or two thousand dollars to take our employees out of jail when an accident happens on the road.

Q. Are you on any bonds now?

A. No; all are cancelled. When a car-driver runs over somebody and the person is injured the poor driver is locked up and invariably I have to go and take him out.

Q. You say your name is not on any bond now in existence?

A. No; not on any bonds—yes, $5,000 on Lesche's bond.

Q. Are you not on a bond of $5,000, in a case pending in this court, for city licenses of 1888?

A. Yes.

Q. Are you not on another bond for $5,000, in a case pending in this court, for city licenses of 1889?

A. Have I another one?

Q. Yes.

A. What does it amount to?

Q. The bonds amount to $10,000. Are you tutor of any minors?

A. I am guardian of Mrs. Braughn's children, undertutor without bond.

Q. Are you tutor of any children at all?

A. No, sir.

Q. You are not administrator of any succession?

A. No, sir.

465 Q. Are all your taxes paid?

A. Yes; they will make me pay them. Some people can get off; I can't.

Q. You don't remember now any other bonds on which you are?

A. No, sir.

Q. None except these bonds?

A. No, sir.

Q. You sign all the companies' bonds?

A. Yes, sir.

Q. You don't know anything more about this lease than you have said?

A. No; the property is mine, Mr. Gilmore; I paid cash for it.

(Signed) J. A. WALKER.

Mr. Gilmore offers and introduces in evidence document marked "A," being a general mortgage certificate in the name of Jos. A. Walker.

Q. How much are you assessed for on your stock in trade, Mr. Walker?

A. My stock in trade in my business there?

Q. Yes.

A. $15,000.

Q. Isn't it $10,000?

A. No; $15,000.

Mr. Gilmore offers and introduces in evidence document "B," being a certificate from the board of assessors showing that said stock in trade is assessed at $10,000.

466 By Mr. BUCK:

Q. Have you any personal property—stocks, bonds, or anything of that sort?
A. Yes, sir.
Q. Are you worth $50,000 independent of real estate?
A. Yes, sir.

By Mr. GILMORE:

Q. Of what does your personal property consist?
A. Between three and four hundred shares of city railroad stock.
Q. How many shares are you assessed for?
A. None at all; the company pays that. I have to make a return to the assessors of each stockholder and the number of shares, but company pays the taxes.

By Mr. BUCK:

Q. The gentleman has a list showing that you own 250 shares; have you bought any shares since then?
A. Yes, sir.

By Mr. GILMORE:

Q. What date?
A. I can't tell you.
Q. This year?
A. Yes, sir; within a month, and again a month before.
Q. How many shares stand in your name?
A. 331 shares.
Q. In your own individual name?
A. Yes, sir.
Q. Are not some of them in the name of your family?
A. No, sir; in my own name. I carry my own.

Q. Did you make a return to the board of assessors this
467 year?
A. Yes, sir; 250 shares.

Q. Will you furnish me a certificate from the secretary of your company showing what stock is assessed in your name?
A. Yes, sir. I have also Mexican lottery stock and Alexander mining stock, not to speak of the West End property.

CHAS. F. BUCK, Esq., duly sworn, testified as follows, viz:

Direct examination by Mr. GILMORE:

Q. You signed this bond for $35,000, Mr. Buck?
A. Yes, sir.
Q. Your residence, at the corner of Vallence and Prytania streets, is your property?
A. Yes, sir.

Q. It is encumbered?
A. Yes, sir.
Q. How much is it assessed for?
A. The residence about $14,000, I think the last assessment was.
Q. You have other real estate?
A. Yes, sir.
Q. Where is it situated?
A. I am building a house now on Prytania street between Vallence and Cadiz, on which I have made, besides the ground, $2,700 payment; I believe another property on Foucher street near Carondelet, and another on St. Denis and Eighth. They are small properties, assessed at a thousand or $1,200 each.
Q. How much is the property on Foucher street worth?
468 A. The building on Prytania bet. Vallence & Cadiz is on a lot which — now assessed at $800. I put six feet additional to it.
Q. Is that all the real estate you have?
A. I have $4,000 invested on a lot belonging to my wife. I have a third interest in the property of Buck, Dinkelspeil & Hart, on Carondelet street between Common and Canal.
Q. What is your aggregate assessment on real estate?
A. Including the one-third interest in the property of Buck, Dinklespeil and Hart, in the neighbor- of $22,000, which would not include the amount invested on my wife's lot nor the property going up.
Q. Is all this property your individual property?
A. Yes, sir; and free from all encumbrances except taxes and current expenses. I have personal property in stock and bonds.
Q. In what corporation?
A. City railroad stock, 50 shares; Louisiana Brewing Co., 10 shares, and also stock in the Metropolitan bank, Germania Savings Bank, and the Mexican Lottery Co.
Q. Please state the value of each—the Mexican lottery, for instance.
A. I heard yesterday it was worth 52. Preferred stock was quoted at 69.
Q. Is yours preferred or common stock?
A. Preferred and common.
Q. Altogether, at how much do you rate your Mexican lottery stock?
A. I have $5,000 of bonds of the Co., worth about 60 or 62. I have an investment in another Mexican concern—a home-
469 stead association in the city of Mexico. I have about $3,000 invested in one of our local homestead associations.
Q. What is this Germania stock worth?
A. I have 10 shares in the Germania Insurance Company, quoted at 116, and 15 shares in the Germania Savings Bank, quoted at 205, and 10 shares in the Louisiana Brewing, which, on the basis of the new arrangement, is worth $280 a share; I have 20 shares of Metropolitan Bank stock, quoted at 156.
Q. Are you on any bonds at all?

A. I don't think I am on any bond for a dollar to-day that is in existence. I was on Mr. Dinkelspeil's bond as executor of the Friedlander estate and on Mr. Williams' bond as assistant city purveyor, but he has resigned. I don't know of a bond I am on that is in existence.

Q. You are not tutor of any minors?

A. No, sir.

Q. You are not administrator of any estate?

A. No, sir; I further state that I have fifty shares (50) of city R. R. stock, quoted at 121 per share. My investments in the Mexican lottery are worth at present quotations exceeding $15,000. The Mexican Homestead Association investment is $1,500, worth now $1,600.

(Signed) CHAS. F. BUCK.

These corrections are made by consent and in my presence.

(Signed) S. L. GILMORE.

470 STATE OF LOUISIANA, *Parish of Orleans.*

OFFICE OF RECORDER OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, State of Louisiana, certifies that in the records of his office there are no other mortgages standing in the name of Joseph A. Walker and recorded against all his real and personal property in the parish of Orleans than the drainage privileges.

89–545 April 3, '71 — The lease he made in favor of Jerimah Jerome Haggerty for the term of two years, commencing Sept. 1st, 1870, to Aug. 31st, 1872, with privilege of renewal for 3 years.

The building, with granite front, known as No. 6 Royal, bet. Custom-House & Canal Sts., at the annual rent of $3,000, payable monthly, per act, under private signature, dated Sept. 1st, 1870.

89–545 July 15, '71 — The renewal of the above lease extended 13 months, until 13th Sept., 1876, by act, under private signature Wm. J. Castell, N. P., dated June 19, '71.

92–20 July 7, '71 — The lease he made in favor of Cornelius Haggerty per act passed before W. J. Castell, N. P., dated June 19, '71, for the term of 5 years, commencing on the 1st of October, 1871, and ending Sept. 30, '76. The lower floor of the granite-front store known as No. 113 Canal St., bet. Royal and Exchange alley,

471 — in the 2nd district of this city, for and in consideration of the annual rent of $3,800 per annum, payable monthly.

273–417 March 23, '84 — The lease Jos. A. Walker & Co. granted, and in favor of Mrs. Cora Ann Cox and of Samuel B. Slocomb for the term of 5 years from the 1st of October 1885, of the property cor. Canal and St. Charles,

per act before Wm. O. Hart, N. P., dated Feb'y 14, '84.

306–123 One city tax of 1884, residence, $20.00.

306–123 One city tax of 1884, S. 9362, b'd by Pry., Robert, Pitt, and Upper Lyon, lot 1–9, 10, 11–15, $80.00.

423–99 One city tax of 1889, sq. 225, b'd by St. Cha's, Canal, Carondelet, and Common, $2,828.00.

423–99 One city tax of 1889, sq. 225, No. 120 Canal St., $404.00.

423–99 One city tax of 1889, sq. 952, St. Cha's, Second, Carondelet, and Third, $343.40.

423–99 One city tax of 1889, sq. 952, b'd by St. Charles, Second, Carondelet, & Third, res., $40.40.

State tax for the years 1880 to 1889, ass'd various.

9 a. m., New Orleans, June twenty-first, 1890.

(Signed) V. J. JOUBERT.

472 Jas. A. Renshaw, president; Sam'l J. Kohlman, vice-presipent; Fendel Horn, secretary.

Sam'l J. Kohlman, 1st district,
Joseph Demoruelle, 2nd "
Louis A. Richards, 3rd "
James A. Renshaw, 4th "
Thomas E. Higgins, 5th "
David Zable, 6th "
Orense A. Trezevant, 7th "

Board of State assessors, parish of Orleans.
Room 15, City Hall, New Orleans, June 21st, 1890.

To whom it may concern:

This is to certify that from the records of this office "Joseph A. Walker" is assessed for the year 1890 in the squares below designated, as follows:

1st dist., sqr. 225, St. Charles and Canal:

Real estate	$140,000
Mdse. stock in trade	10,000
Furniture and fixtures	5,000
	$155,000

4th dist., sqr. 232, St. Charles and Second:

Real estate	$16,000
Furniture	1,500
Jewelry	500
	$18,000

250 shares New Orleans City & Lake R. R. Co., $7,092.50.

(Signed) FENDEL HORN, *Sec'y.*

473 JOSEPH A. WALKER, Esq., sworn.

Direct examination by Mr. GILMORE:

Q. Mr. Walker, do you owe anybody?
A. No, sir.
Q. None at all?
A. No, sir.
Q. How do you do your business?
A. I do a cash business, the same as any merchant who does as large a business as I do. I have my current bills, which I pay every month. I have no bills payable.
Q. You owe no notes or anything else?
A. I have no debts except the current debts people pay every month.
Q. How much do your monthly bills aggregate?
A. They aggregate ten thousand dollars.
(Signed) J. A. WALKER.

H. GALLY, Esq., sworn.

Direct examination by Mr. GILMORE:

Q. Besides the mortgage that you spoke of the last time have you any debts outstanding due by you?
A. I have some notes out on my plantation.
Q. For supplies furnished, you mean?
A. A portion of the notes are bearing on the plantation.
Q. But you owe no money for supplies to your plantation?
A. No, sir.
Q. You don't owe any outside debts outside of the mortgage you spoke of?
A. No, sir.
Q. Are you not in business?
474 A. I am an agent.
Q. Agent for what?
A. For real estate. I am a real-estate agent.
Q. You represent people living in France, do you not?
A. Yes, sir.
Q. You have, of course, no debts in connection with that business?
A. No, sir.
(Signed) W. GALLY.

CHARLES F. BUCK, Esq., sworn.

Direct examination by Mr. GILMORE:

Q. Mr. Buck, you have no debts that you do not pay?
A. Yes, sir; I have, but nothing that I cannot pay.
Q. How much do they aggregate, Mr. Buck?
A. About eleven thousand dollars. I have some additional assets in addition to what I swore on my former examination. I omitted assets in my estimation to the value of about seven thousand dollars, besides contingent prospects, which I — not estimate.

Q. What do those assets consist of?
A. Bonds.
Q. Premium bonds?
A. Not wholly, but in part; and stock in manufacturing interests which are quite successful; and then my interest in business of Buck, Dinklespeil & Hart.
Q. What is the name of that factory?
A. The New Orleans Manufacturing Company. It is a furniture manufacturing Co. I don't know its exact title. It is on Peter St. near Girod; household furniture not included in this testimony.

(Signed) CHAS. F. BUCK.

475 R. M. O'BRIEN, Esq., sworn.

Direct examination by Mr. GILMORE:

Q. Mr. O'Brien, I understand you have no debts except those that you pay currently?
A. I owe forty dollars across the street to Loeber; that is all. My small personal debts don't aggregate fifty dollars.

(Signed) R. M. O'BRIEN.

E. J. DEMOREST, Esq., sworn.

Direct examination by Mr. GILMORE:

Q. Mr. Demorest, have you any outstanding debts due by you?
A. None at all, except my own personal expenses.
Q. You are not in business?
A. I am cashier for the Louisiana State Lottery Co. I am not in business for myself.
Q. You have no notes out?
A. No, sir.

(Signed) E. J. DEMOREST.

476 *Certificate of the Clerk.*

UNITED STATES OF AMERICA, }
State of Louisiana. }

Supreme Court of Louisiana.

I, Joseph F. Poché, clerk of the supreme court of the State of Louisiana, holding sessions in the city of New Orleans, hereby certify that the foregoing 310 pages contain a full, true, and complete transcript from the record of the proceedings had in the civil district court for the parish of Orleans, wherein The City of New Orleans was relator and The New Orleans City and Lake R. R. Co. was defendant, which record is on the file of this court, under No. 10514, and also a true copy of all the proceedings had in this hon. court on appeal taken by said defendant.

In testimony whereof I have hereunto set my hand and affixed

Seal Supreme Court of the State of Louisiana.

the seal of this honorable court, at the city of New Orleans, this 29th day of July, A. D. 1890, and in the one hundred and fourteenth year of the Independence of the U. S. of America.

JOSEPH F. POCHÉ, *Clerk.*

Certificate of Chief Justice.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that Joseph F. Poché is clerk of the supreme court of the State of Louisiana, holding session at the city of New Orleans, and that the signature of the said Joseph F. Poché to the foregoing certificate in the case of State *ex rel.* City of New Orleans *vs.* New Orleans City and Lake R. R. Co., No. 10514 of the docket of this court, is in the proper handwriting of him, the said clerk, and in due form of law.

In testimony whereof I have hereunto set my hand and affixed my seal, at the city of New Orleans, this the 29th day of July, A. D. 1890, and in the 114th year of the Independence of the U. S. of America.

Seal Supreme Court of the State of Louisiana.

E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

477 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the chief justice of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said case of the State of Louisiana on the relation of the City of New Orleans *versus* The New Orleans City and Lake Railroad Company, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The State of Louisiana on the relation of the City of New Orleans and The New Orleans City and Lake Railroad Company, No. 10514 of the docket of the supreme court of Louisiana, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause
478 of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of

the said New Orleans City and Lake Railroad Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the second day of June, in the year of our Lord one thousand eight hundred and ninety.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by—
E. BERMUDEZ,
Chief Justice of the Supreme Court
of the State of Louisiana.

479 [Endorsed:] No. 10514. State *ex rel.* City of N. O. *versus* N. O. City & Lake R. R. Co. Writ of error. Supreme Court of Louisiana. Filed Jun- 2, 1890. Joseph F. Poché, clerk.

480 THE UNITED STATES OF AMERICA:

Supreme Court of the United States.

The President of the United States to the State of Louisiana on the relation of the City of New Orleans, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the New Orleans City and Lake Railroad Company is plaintiff in error and the State of Louisiana on the relation of the City of New Orleans is defendant in error, to show cause, if any there be, why the judgment rendered against the said New Orleans City and Lake Railroad Company as in said — mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of June, in the year of our Lord one thousand eight hundred and ninety.

E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

481 [Endorsed:] R. Personally on Jos. A. Shakspeare. Served this day. United States circuit court, eastern district of Louisiana. No. 10514. State *ex rel.* City of N. O. *vs.* N. O. City & Lake R. R. Co. Citation.

Marshal's Return.

Received Jun- 12, 1890, and on the 13th day of June, 1890, I served a copy of the within citation on the City of New Orleans, plaintiff herein, by personal service on Joseph A. Shakspeare, its mayor. Returned same day.

[Seal Civil District Court for the Parish of Orleans, State of Louisiana.]

J. F. TIMS,
D'y Sh'ff Parish of Orleans, La.

Sworn to & subscribed before me this 20th day of June, 1890.
E. A. LUMINAIS, *Clerk.*

Endorsed on cover: Louisiana supreme court. No. 1314. The New Orleans City and Lake Railroad Company, plaintiff in error, *vs.* The State of Louisiana *ex rel.* The City of New Orleans. Filed September 27, 1890.

FILED.
FEB 24 1891
JAMES H. McKENNEY,
CLERK.

15-7-219

SUPREME COURT OF THE UNITED STATES.

No. 1314.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

THE NEW ORLEANS, CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL. THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief in Behalf of the City of New Orleans, Defendant in Error, on Motion to Dismiss or Affirm.

SAMUEL L. GILMORE,
Assistant City Attorney of New Orleans.

L. GRAHAM & SON, 99, 101, 103 GRAVIER ST., N. O.

SUPREME COURT OF THE UNITED STATES.

No. 1314.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

THE NEW ORLEANS, CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL. THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

The defendant in error respectfully moves the Court to dismiss the writ of error taken herein, or to affirm the judgment of the Supreme Court of the State of Louisiana in this cause, for the following reasons:

1. That there is, truly speaking, no sufficient federal question in the case.

2. That it is patent on the face of the record that the writ herein is taken by the plaintiff in error solely for delay and that no award of damages for frivolous appeal can compensate the defendant in error, and the citizens of New Orleans, the beneficiaries of the contracts involved, for the injury they will suffer should the Court entertain jurisdiction and the delay sought by plaintiffs in error be obtained.

3. That the questions raised by plaintiff in error on which to ascribe jurisdiction to the Court are frivolous.

SUPREME COURT OF THE UNITED STATES.

No. 1314.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

THE NEW ORLEANS, CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL. THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief in Behalf of the City of New Orleans, Defendant in Error, on Motions to Dismiss or Affirm.

Defendant in Error, the City of New Orleans, respectfully moves the Court to dismiss the writ of error herein taken or to affirm the judgment of the Supreme Court of Louisiana.

These motions are made under the authority of the case of Chanute City vs. Trader, 132 U. S. 210.

We admit, at once, that it is alleged in the answer or return of the plaintiff in error to the writ of *mandamus*, issued at the inception of this litigation, that the Act of the General Assembly of the State of Louisiana, known as Act No. 133 of 1888 (Appendix).

under the provisions of which this suit was brought, impairs the rights secured to plaintiff in error by the contracts sued on herein, and that it was contended in the lower court that it had such effect because it alters the remedy which the City of New Orleans had, by the preëxisting law of Louisiana, for the enforcement from plaintiff in error of the obligations due by it under the contracts.

We further admit that, such being the pleading and the position of plaintiff in error, the Supreme Court of Louisiana was obliged, in its decision of the case, to make the statement that the Act of 1888 did not impair the obligations of the contracts, a thing so obvious that the State Supreme Court did not even deem it necessary to give any reason for its affirmation.

Technically speaking, therefore, and in view of the allegations of plaintiff in error, it would hardly be proper for us to deny the apparent presence here of a Federal question.

There is really, however, no question of any kind involved in this case and we respectfully submit that should the Court, because the case is seemingly within its jurisdiction, decline to entertain the motion to affirm, a great wrong will be done to defendant in error, and to the two hundred thousand inhabitants of the City of New Orleans, *the beneficiaries of the contracts*, who must inevitably suffer injury in consequence of the long delay necessarily incident to a hearing of this case upon the merits, injury for which no award of damages would ever compensate.

We feel confident, however, that this Court will not refuse and will never refuse to exercise that power to do justice, inherent in it as a court, irrespective of its appellate jurisdiction and of its rules and which was successfully invoked by the defendant in error in Chanute City vs. Trader, in any case where the necessity for its exercise is shown.

We believe that when the case is fairly stated the Court will not refuse to grant the relief to which the defendant in error is, by every principle of law and equity, entitled, *only because the*

plaintiff in error has, for the very purpose of postponing the doing of its manifest duty, introduced into the record its gratuitous averment that the statute under which this proceeding was instituted violates the Constitution of the United States.

Being convinced of this, we respectfully ask leave to lay the whole controversy before the Court and to show how absolutely frivolous is the question upon which the jurisdiction of the Court depends.

In the year 1888, it having grown to be a matter of public reproach to the parish and municipal corporations throughout the State of Louisiana that contracts made with them by private corporations, whereby the private corporations were bound to pave, grade, repair, reconstruct or take care of any street, highway, bridge, culvert, levee, canal, ditch or crossing, were systematically, openly and audaciously violated and that existing forms of proceedings, by reason of the length of time allowed for their trial, determination and conclusion, were utterly inadequate to force these private corporations into respect of the obligations assumed by them, the Legislature of Louisiana to effectually cure this evil passed an act known as Act No. 133 of 1888, allowing suits to be brought in the form of *mandamus* proceedings to compel the performance by private corporations of their contracts with parish and municipal corporations, providing summary methods for trying such suits and stating the manner in which judgments obtained therein shall be enforced.

The defendant in error sued out the writ of mandamus, authorized by said act, to compel the plaintiff in error, with which it has contracts whereby the plaintiff in error is bound to pave, reconstruct, repair and take care of certain streets and portions of streets, to do work which, under the plain letter of plaintiff's contracts, it has obligated itself to do. This writ of *mandamus* was made peremptory by the Civil District Court for the Parish of Orleans, in which the case was first tried, the decision of the Civil District Court was amended and affirmed, on appeal, by the Supreme Court of Louisiana, and the plaintiff in error now appears before this Court with the sole pretence that Act No.

133 of 1888 has a retroactive effect impairing the obligations of its contracts.

It is, indeed a difficult matter, after inspecting the record, to understand how it can even be pretended that Act 133 of 1888 has the effect of impairing plaintiff's contracts.

The act certainly does not curtail or take away the franchise which plaintiff in error is exercising under the contracts: it does not abridge the duration nor diminish the value of this franchise; it does not require the payment of more money than the plantiff in error has already paid in part consideration of the grant, nor call for the doing of more or of more expensive work than the contract specifies.

The act deals exclusively with the remedy by which the defendant in error is to compel the performance by plaintiff in error of the obligations which are due by it; it is a law enforcing contracts, not one impairing them.

The statute is essentially and entirely remedial, and even as such only changes the laws existing at the dates of the making of plaintiff's contracts in this, that it allows to the defendant in error a more complete and summary method of applying the remedies it had, before the passage of the act, for the enforcement of the performance by plaintiff in error of its obligations under the contracts.

A glance at the law of Louisiana as it existed prior to the year 1888 is sufficient to convince the Court of this. Article 1926 of the Revised Civil Code of Louisiana expressly declares: "On the breach of any obligation to do or not to do, the obligee is entitled either to damages, or, in cases which permit it, to a specific performance of the contract, at his option, or he may require the dissolution of the contract, and in all these cases damages may be given where they have accrued, according to the rules established in the following section."

The next article of the Civil Code, No. 1927, reads:

"In ordinary cases the breach of such a contract entitles the party aggrieved only to damages, but where this would be an inadequate compensation, and the party has the power of

" performing his contract, he may be constrained to a specific " performance by means prescribed in the laws which regulate " the practice of the courts."

The execution of judgments obtained in suits for the specific performance of contracts is provided for in Arts. 636 and 637 of the Code of Practice of Louisiana.

Art. 636 of the Code of Practice says:

" When the judgment orders, not the delivering, but the doing " or refraining from something specified in it, if the party con- " demned, on demand made by the sheriff that he shall comply " with it, refuses or neglects to do so, and this refusal or " neglect appears by a certificate of the sheriff, the party in " whose favor the judgment was rendered may obtain, on " motion, an order to distrain all the property, movable and " immovable, of the party who is in default, until he shall " have fully satisfied the judgment."

Article 637 of the Code of Practice is as follows: " It is the " duty of the sheriff charged with the execution of this order of " distringas to seize without delay, the movable and immovable " property of the party in default, and to receive the rents, in- " come and other profits and to keep the whole subject to the " order of the court, until the order shall be revoked."

It thus appears from the clear and unequivocal language of the law as it existed prior to the year 1888 and at the time the contracts now sought to be enforced were entered into, for it will not be contended that the articles of the Civil Code and of the Code of Practice, above quoted, have not been part of the law of Louisiana since the first adoption of the codes, that the defendant has always had a right to sue the plaintiff in error for the specific performance of the contracts, and a right upon securing judgment to obtain, *by making an ex parte motion, and exhibiting the certificate of the sheriff, to the effect that, although proper demand had been made, the thing required by the judgment had not been done*, a writ of distringas in execution of the judgment.

Act 133 of 1888, therefore, by allowing suits for specific performance of contracts to be brought by parish and municipal corporations and by specifying the writ of distringas as the means of execution of judgments obtained in such suits, does not even change the remedy which defendant in error had for the enforcement of its contracts, by the law as it existed when the contracts were made, and which must be considered as written into and forming part of the contracts, except in this, that the Act of 1888 allows the writ of distringas to be issued only after the hearing of a *contradictory motion and upon proof*, thus allowing plaintiff in error a better chance to avoid the writ than it had under the old law.

The plaintiff in error contended in the court below that the Act of 1888 has altered the remedy defendant had prior, to its passage, in a way predjudicial to plaintiff's rights, in that it specifies that when the writ of distringas issues, the court may also order the sheriff to do the work and to apply the revenues of the property distrained to its payment, but we submit that, even in this respect, the law has not been substantially changed.

In the case of Avery vs. Police Jury, 15 La. An. Rep. 223, wherein the judgment of the lower court ordered "that the "dam erected by plaintiff on his plantation across the prong of "Bayou Paul be torn down, and the same prong be replaced in "a state of nature," and where the question was whether the party in whose favor the judgment was rendered was entitled to the writ of distringas, the Supreme Court of Louisiana decided that the writ should not issue because the judgment did not order Avery or any other specified person to tear down the dam, although it appears from the report of the case that the police jury had prayed that Avery be ordered to remove it.

The court said: "It is decreed that the dam erected by "plaintiff across the prong of Bayou Paul be torn down, and "the same prong be placed in a state of nature." As no other person is ordered by the judgment to do this work it necessarily follows that it must be done by the ordinary executive officer of the court, the sheriff. C. P. 760."

If, then, the court of first instance had, in rendering its judgment in this case, simply omitted to decree, either deliberately or inadvertently, that the respondent, the plaintiff in error, was to do the work required by the judgment, there can be no doubt that the defendant in error, at the termination of the litigation, would have the right to have the work done by the sheriff.

Act No 133, of 1888, therefore, when it authorizes the court to order the sheriff to do the work required by the judgment, as well as to issue the writ of distringas, does not provide new modes of executing judgments in suits for specific performance of contracts, nor change the old ones; the very greatest effect that the statute can be claimed to have is, that it allows the use together, in the cases covered by the statute, of two of the means provided by the pre-existing law for the execution of different kinds of judgments.

We even think it safe to say that if the writ of distringas, in any case arising prior to 1888, had been found inadequate to enforce compliance with a judgment ordering the doing of a specified thing, the courts of Louisiana, under the general power to enforce respect for and obedience to their mandates, which every court has, might, legally, have cumulated the very two processes which Act No. 133 of 1888 now ordains shall, in certain cases, be joined.

Even were our position untenable, that Act No. 133 of 1888 has not changed the mode of execution of judgments rendered in suits for specific performance, and were it a fact that the act does make the alteration plaintiff in error alleges it makes, the act would still be constitutional for the reason now about to be advanced and under the authorities now about to be quoted in connection with the change the act has certainly made in the mode of trial of suits for specific performance.

We are willing to concede, as has just been intimated, that Act No. 133 of 1888, in so far as it provides for a speedier hearing and decision of certain suits for the specific performance of contracts, does alter the ordinary mode of trial of suits for specific performance. But we maintain that even were it

the remedy *plaintiff in error* had under existing law, for the enforcement of its rights under the contract which the act had the effect of thus altering, the statute would be a valid one.

It is well settled by the decisions of this court that the Legislature may change at its discretion the forms of action or modes of remedy, provided no substantial right secured by the contract be impaired by the change.

Chief Justice Marshall, in Sturges vs. Crowninshield, 4 Wheaton 122, early in the constitutional history of this country, established this doctrine. His language is: "The distinction between the obligation of a contract and the remedy given by the Legislature to enforce that obligation, has been taken at the bar and exists in the nature of things. Without impairing the obligation of the contract, the remedy may certainly be modified as the wisdom of the nation shall direct. Confinement of the debtor may be a punishment for not performing his contract, or may be allowed as a means of inducing him to perform it. But the State may refuse to inflict this punishment, or may withhold this means and leave the contract in full force. Imprisonment is no part of the contract, and simply to release the prisoner does not impair its obligation."

In Bronson vs. Kinsie, 1 Howard 632, the same distinction was made. The court said in that case:

"If the laws of the State passed afterward had done nothing more than change the remedy upon contracts of this description, they would be liable to no constitutional objection. For, undoubtedly, a State may regulate at pleasure the modes of proceeding in its courts in relation to past contracts as well as future."

In Tennessee vs. Sneed, 96 U. S. 74, it was held that:

"If a particular form of proceeding is prohibited, and another is left or provided which affords an effective and reasonable mode of enforcing the right, the obligation of the contract is not impaired. * * * The rule seems to be that in modes of proceeding and of forms to enforce the

" contract the Legislature has the control, and may enlarge, limit " and alter them, provided that it does not deny a remedy, or " so embarrass it with conditions and restrictions as seriously " to impair the value of the right."

This principle has been well stated by the Supreme Court of Louisiana: "No axiom, indeed, is more clear than that acquired rights and existing compacts can not be affected by subsequent legislation. But with regard to remedies, forms of proceedings and limitations of actions, the same principle does not necessarily apply. Prescriptions may be shortened even in relation to actions, the right to which has already arisen, and we do not doubt that more speedy and summary modes of proceeding may be constitutionally established."

State vs. Bermudez, Judge, 12 La. Rep. 352.
Curtis vs. Whitney, 13 Wallace 71.
Walker vs. Whitehead, 16 Wallace 318.
Terry vs. Anderson, 95 U. S. 633.
Louisiana vs. New Orleans, 102 U. S. 206.
Penniman's Case, 103 U. S. 714.
Baldwin vs. Bennett, 6 Rob. 309.

It must, however, be remembered in this connection that Act No. 133 of 1888 does not affect at all *plaintiff's* remedy for the enforcement of what is due to it under the contract; it only deals with *defendant's* remedy, and only bears upon plaintiff in so far as its defence to an action against it for compliance with its obligations is concerned.

This being so, it would seem that, were the statute unconstitutional at all, it would be so rather as one in violation of the Fourteenth Amendment to the Constitution than as one violating Art. 1 of the Constitution, and this is not even alleged.

Plaintiff in error has heretofore only contended and can now only contend that the statute has altered the position it would have occupied prior to the passage of the Act by allowing suit against it for specific performance, to be brought in the form of a *mandamus* proceeding, thus depriving it of the

opportunity of pleading in compensation and reconvention, and of the privilege of trial by jury.

It only remains, at the present stage of the discussion, to examine how far and in what respects Act 133 of 1888 has altered the position, with respect to the mode of trial, which plaintiff in error, as a defendant in a suit by the defendant in error for execution of the contracts, would have occupied prior to 1888.

It will be immediately seen that the only effect the statute, by allowing the use, in the suit for specific performance, of the form of a mandamus proceeding has, is that it makes the *trial* of the suit more expeditious. The nature of the action is not thereby changed; it is still a suit for specific performance. The *mandamus* spoken of is really nothing more or less than a rule to show cause which allows full chance to make defence to and imposes no greater burden on the defaulting party. The plaintiff in error owes the work and loses no more by being compelled to do it, by the proceeding provided for by the statute, than it would lose by being compelled to do it by any other proceeding.

While it is a fact, as the record will show, that although no special plea of compensation was made in plaintiff's return to the *mandamus*, no objection was made on the trial when the plaintiff in error attempted to prove, as an offset to what it owed the defendant in error, an alleged wrong done it, by the municipality, which had already been judicially pronounced to be no wrong at all. Record, pages 43, 44, 102, 103; N. O. City R. R. Co. vs. Crescent City R. R. Co., 12 Federal Reporter 308. It can, therefore, hardly be maintained by plaintiff in error that the Act of 1888 deprived it of the right in this case, to establish an offset, had such a thing been possible.

Admitting, however, that the Act of 1888 does deprive plaintiff in error of the right to plead in compensation and reconvention, it does not therefore follow that it impairs the obligations of the contracts.

Article 366 of the Code of Practice of Louisiana defines compensation or set-off to be "a mode of extinguishing debts, "which takes place when it happens that both plaintiff and de- "fendant are indebted to each other; each retaining in pay- "ment of the sum due to him the amount which he owes to the "other."

Article 368 of the Code of Practice says: "Compensation "may be pleaded, either in the answer to the principal demand, "or it may be claimed by a distinct and separate demand."

Article 374 of the Code of Practice, which treats of reconventional demands, reads: "The demand which the defendant "institutes in consequence of that which plaintiff has brought "against him, is termed a demand in reconvention."

And Article 377 of the Code of Practice is to the effect that: "In all cases of reconvention the defendant may plead it "either as an exception in his answer to the principal demand "or institute a distinct and separate demand before the court in "which the main action is pending; and the original plaintiff "shall be bound to answer without pleading to the jurisdiction "of the court, even if he has his domicil elsewhere, provided "the court be competent."

Even if Act 133 of 1888 takes away from plaintiff its right to plead in compensation and reconvention, it thereby only forces it into the necessity of bringing its action *via ordinaria*, in order to recover what the act prevents it from having recognized as an offset or from claiming in reconvention in a suit brought against it for what it owes.

To use again the language of the court in Tennessee vs. Sneed, 96 U. S. 74: "If a particular form of proceeding is "prohibited and other is left or provided which affords an ef- "fective and reasonable mode of enforcing the right, the obli- "gation of the contract is not impaired."

Nor does Act 133 of 1888, because it declares that the cases covered by its provisions shall be tried without the intervention of a jury, violate the contracts.

Plaintiff in error has no property in, no vested right to, a trial by jury of his case, as a result of the contract. Trial by jury is only one of the forms of the municipal law which the State is at liberty to withhold, if she so desires.

Munn vs. Illinois, 94 U. S. 134.

"The regulation of the forms of administering justice by the "courts is an incident of sovereignty. The surrender of this "power is never to be presumed."

Railroad Co. vs. Hecht, 95 U. S. 170.

The provision in Act 133 of 1888, that the suits covered by it shall be tried without a jury, is one which belongs to remedies against the corporations spoken of in the Act, and not to the grant of rights.

"As to remedies it has always been held that the legislative "power of change may be exercised, when it does not affect "injuriously rights which have been secured."

Railroad Co. vs. Hecht, 95 U. S. 170.

Trial by jury in State court proceedings is not a right secured by the Constitution to citizens of the United States.

"A State can not deprive a person of his property without "due process of law; but this does not necessarily imply that "all trials in the State courts affecting the property of persons "must be by jury. The requirement of the Constitution is met "if the trial is had according to the settled course of judicial "proceedings. Due process of law is process according to "the law of the land. This process in the States is regulated "by the law of the State."

Walker vs. Sauvinet, 92 U. S. 92.

Hertado vs. California, 110 U. S. 533.

In conclusion, we would like to add that while we bear in mind that the decisions of the Court on motions such as are now made are to the effect that unless there be color of right to the dismissal of the writ of error shown, the motion to affirm the judgment will not be considered, yet there are many cases reported wherein the

judgments of the lower courts were affirmed although the jurisdiction of this Court was clear.

The Court, in Chanute City vs. Trader, 132 U. S. 213, reviewing the authorities, says: "In Micas vs. Williams, 104 U. S. 556, there " was a motion to affirm united with a motion to dismiss a " writ of error. The affidavit in opposition to the latter showed " jurisdiction as to the amount involved, though on the record " as it stood when the motion was made there was color of " right to the dismissal. But the court affirmed the judgment " on the ground that the writ was taken for delay only.

" In S. C. Tryon, 105 U. S. 267, there was a motion to affirm " a decree united with a motion to dismiss the appeal in an ad- " miralty suit. The ground for making the motion to dismiss " was that there was no bill of exceptions, but only a finding of " facts and conclusions of law. The court overruled that " ground, but it is difficult, from the report of the case, to see " what color of right there was to a dismissal. Yet it affirmed " the decree on a consideration of the findings of fact.

" In Swope vs. Leffingwell, 105 U. S. 3, there was a motion " to affirm united with a motion to dismiss a writ of error to a " State court. The motion to dismiss was made on the ground " that there was no Federal question involved.

" The court held that it had jurisdiction, but affirmed the " judgment on the ground that the case on the merits was " governed by previous decisions.

" In the present case there does not appear to be any ground " for contending that this court has no jurisdiction; yet we are " entirely satisfied that the reasons assigned for taking the writ " of error are frivolous, and that it was taken for delay only."

We also recognize the wisdom of what was said by the Court in Whitney vs. Cook, 99 U. S. 607, where it gave the reason why, ordinarily, a motion to affirm would not be entertained in the absence of color of right to a dismissal, and said: "Our " experience teaches that the only way to discourage frivolous " appeals is by the use of our power to award damages."

But we earnestly and respectfully urge that exceptional cases will arise to which the reason given by the Court will not apply, cases in which money will not pay the losses caused by the lapse of time, cases in which the plaintiff does not consider or dread any penalty the Court can inflict, other than the closing of the litigation, and we submit that such a case is now at bar.

The Chief Justice of Louisiana, giving his reasons for declining to allow the writ of error in this case to operate as a supersedeas, says:

"The writ is allowed on plaintiff therein furnishing bond "and security, conditioned as the law directs, in the sum of "$1,000, returnable to the U. S. Supreme Court, on or before "the October term of the present year, 1890.

"It is not considered that the writ should operate as a super- "sedeas. Practically, the proceeding is one for a mandatory "injunction to compel the defendant company to perform work "which it was averred it was bound to do under its contracts "with the City of New Orleans.

"Previous to 1888 the suit could not have been brought in "this form; it had to be carried on *via ordinaria;* but in the "year named the Legislature, to afford prompt relief in such "cases of urgency, authorized such summary proceedings as "have been brought in this instance.

"The proceeding is not strictly a mandamus proceeding. "It is more of an injunction mandatory in character than a "mandamus. *There was little or no contention as to the obli- "gation of the railroad company to do the work asked to be "performed*, except as to that which the company was averred "to be bound to do on the thoroughfares, on the sides of the "middle grounds separating them.

"The judgment of the Supreme Court of Louisiana reversed "that of the lower court which condemned the company to "work on those thoroughfares and affiirmed it in other re- "spects.

"For my own satisfaction I have requested a report from the "City Surveyor, showing the cost of the work, the performance

"of which would be stopped by a supersedeas proceeding, and "he says that it would amount to $90,000, and adds $15,000, "making $105,000.

"*The liability of the defendant company for the work to be "done is unquestionable, and the inability of the City of New "Orleans to have it done in case the company does not is "indisputable, and the work is a public necessity.*

"*The injury which would be suffered by the City of New "Orleans and the public in case the work is not done would "be irreparable and incalculable.*

"I do not think that in a case of this character the law allows "the writ to operate as a supersedeas, and therefore decline to "say that it shall so operate.

"Should superior authority, however, think differently, I "think that the bond required should not be less than $105,000.

"I append the surveyor's report as part of my present rea-"sons."

The City Surveyor's report reads as follows: "I estimate the "cost of repairs recited in the judgment of Division B, Civil "District Court of the City of New Orleans, to be made by "the New Orleans, City & Lake Railroad on the following lines, "viz.:

"Levee & Barracks line.

"Camp & Prytania line.

"Camp & Magazine line.

"Rampart & Dauphine line.

"Canal, Metairie Road & Bayou St. John line.

"Esplanade & Bayou Bridge line.

"N. O., City & Lake Railroad line.

"Extension of the Camp & Prytania line.

"Extension of the Camp & Magazine line.

"To be equal to the sum of $90,000. I further estimate that "if the work is delayed for three years, or during the probable "pendency of the suit in the United States Supreme Court, its "cost will be increased by the sum of $15,000."

Record, pages 263, 264 and 265.

The record more than justifies the positive language used by Chief Justice Bermudez in reference to the absence of any defence, on the part of plaintiff in error, on the merits of this case, for its inspection will show that the company's duty to do the work specified in the bill of particulars, annexed to the petition for *mandamus*, except with reference to streets where there are middle or neutral grounds, is so clear that it made little effort to show that the work was not required of it by the contracts.

The decision of the State Supreme Court, relieving plaintiff in error from the paving and care of streets on which there are neutral grounds, was immediately accepted by the defendant in error as a final interpretation of the contracts, and no rehearing was asked.

The City of New Orleans only desires plaintiff in error to do what it plainly ought to do without asking, and nothing more, and it respectfully submits that it should be forced to do this at once The plaintiff in error is now operating miles and miles of street railways in the City of New Orleans, its tracks are laid through the most important business and residence thoroughfares of the city, over which hundreds and hundreds of men and women and children pass, hourly, in vehicles and on foot, it is drawing revenues and growing wealthier every day from its possession of the franchise which the contracts sued on in this case have secured to it, and the price of that franchise is not paid. The streets it bound itself to pave are unpaved, the roads it bound itself to keep in repair are impassable, the bridges it bound itself to build over the drains are broken down and falling in, and the drainage it bound itself to preserve is obstructed and destroyed.

If it can only put off the reckoning day for three years more by means of its present empty appeal, those who dwell in the City of New Orleans will suffer during that time, on account of the deplorable condition of the streets named in the contracts, inconvenience and damage and be exposed to danger to life and to limb, while the plaintiff in error will cheerfully face without hope and

will patiently await without fear whatever judgment the court may render on final hearing, for it will have gained all the advantage it sought when it sued out the writ of error, and it can mature, at its leisure, its plans for the further postponement of the payment of the debt it owes to the municipality and to the people.

Respectfully submitted,

SAMUEL L. GILMORE,

Assistant City Attorney of New Orleans.

APPENDIX.

An Act providing a summary remedy against corporations to compel a compliance with certain obligations and contracts with municipal corporations, and providing ways and means to enforce said remedy.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, that in all cases where any corporation has heretofore contracted with, or may hereafter contract with, or shall be otherwise legally bound to any parish or municipal corporation in this State, with reference to the paving, grading, repairing, reconstructing or care of any street, highway, bridge, culvert, levee, canal, ditch or crossing, and shall fail or neglect to perform said contract or obligation, the said parish or municipal corporation, or any officer thereof, or any five tax payers thereof, shall have the right to proceed by a writ of mandamus to compel the performance of said contract or obligation, or any part thereof, which writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury, in vacation as well as in term time, and in case of appeal shall be tried by preference in the appellate court.

SEC. 2. *Be it further enacted, etc.*, That in case any corporation shall fail or neglect to comply satisfactorily with any judgment against it in such a proceeding within the time therein

fixed (which time shall be fixed by the court at such period within which the work can be reasonably done), it shall be the duty of the court, on contradictory motion and proof taken in the same case, to issue a writ of distringas against said company, and to order the sheriff to do the work required to be done, and to apply the revenues and property of said company to defray the expenses incurred in executing the judgment of the court.

SEC. 3. *Be it further enacted, etc.*, That all laws and parts of laws contrary to the provisions of this act be and the same are hereby repealed.

(Signed) S. P. HENRY.
Speaker of the House of Representatives.

(Signed) JAMES JEFFRIES,
Lieutenant Governor and President of the Senate.

Approved, July 12, 1888.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original:

(Signed) JOS. GEBELIN,
Assistant Secretary of State.

Acts of Louisiana, 1888, page 191.

157-219

Supreme Court U. S.
FILED,
MAR 28 1899
JAMES H. MCKENNEY
CLERK

15-7-219

SUPREME COURT OF THE UNITED STATES.

No. 1314.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

THE NEW ORLEANS, CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL. THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief in behalf of the N. O., C. & L. R. R. Co., Plaintiff in Error, on Defendant's Motion to Dismiss or Affirm.

CHARLES F. BUCK,
Counsel for Plaintiff in Error.

A. W. Hyatt, Printer and Stationer, 73 Camp street, N. O.—55,138.

SUPREME COURT OF THE UNITED STATES.

No. 1314.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

THE NEW ORLEANS, CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

versus

THE STATE OF LOUISIANA, EX REL. THE CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

Brief in behalf of the N. O., C. & L. R. R. Co., Plaintiff in Error, on Defendant's Motion to Dismiss or Affirm.

I

Most respectfully we set out, in the full consciousness of the dignity of the high tribunal which we are addressing, with the deliberate assertion that the motion to dismiss *or* affirm, submitted in this cause, and the brief filed in support thereof, by defendant in error, have no parallel in the history of the jurisprudence of this Court.

It should be called, not a "motion to dismiss or affirm," but a "motion to affirm WITHOUT a motion to dismiss."

Is it fair to state the proposition thus? Let us look to Movers' brief: they admit without qualification—

First: That there is no color for the motion to dismiss.

Second: That the jurisdiction of this Court is beyond question.

The *first* admission we draw from the general tenor of the argument; there is no pretense that the record affords "color" for the motion to dismiss:" the *second* is made in express terms: (page 2, Mover's brief): "*Technically speaking, it was, and in view of the allegations of plaintiff in error it would hardly be proper for us to deny the apparent presence of a federal question.*"

The substance of the motion and argument resolves itself into an appeal to this Court to make an exception to the sound rules of law and practice which have been followed; that merely on the grounds of policy and alleged hardship accruing to the city of New Orleans, the plaintiff in error must be denied the benefit of the safeguards of regular judicial proceedings. On this sentimental appeal he, the plaintiff, is to be deprived of the benefits of his writ by being denied the opportunity of a full hearing.

We quote from mover's brief, pp. 2 and 3, calling attention to *their* italics, the statement of their cause:

"*We believe that when the case is fairly studied, the Court will not refuse to grant the relief to which the defendant in error is by every principle of law and equity entitled, only because the plaintiff in error has, for the very purpose of postponing the doing of its manifest duty, introduced into the records its gratuitous averment that the statute under which this proceeding was instituted violates the Constitution of the United States.*"

A most violent stretch of expression to be addressed to this Court, in a cause earnestly and seriously contested!

"A question of law only" movers exclaim; the facts are admitted.

This tribunal is constituted to try just such questions.

Our friends seem to forget that it is more important that the law should be correctly interpreted and not enforced until so interpreted, than that a few outlying "mud streets" in the suburbs of New Orleans should be *at once planked and "paved"* with boards.

While we cannot fall into any fear that your Honors might

be influenced in the decision on the motion by the *extrinsic* appeal, based on the pretended hardship, etc., to the people of the city of New Orleans, we feel bound to follow the line of argument pursued by counsel, but content ourselves with simply stating that all the statements in this regard are gross exaggerations and glittering generalities. The statement of the honored Chief Justice of the Supreme Court of the ~~United States~~ Louisiana, in his reasons for refusing to allow the writ or error to operate a *supersedeas* contains an inference of law, is simply argumentative, and means that the delay would cause a kind of damage or injury, in the nature of things "irreparable," and therefore there should be no stay of execution. The word "irreparable" has a technical force in the jurisprudence of Louisiana. Article 307 of the Code of Practice, in regard to injunctions, uses it, and the Supreme Court has interpreted it to mean an "injury which cannot be repaired or made good by money." 32 A. p. 1192. Irreparable means "not compensable by money." Segura vs. Judge, 37 A. 110.

It was in this sense as an argument for not allowing the supersedeas that the phrase that the "injury to the city and the public would be irreparable and incalculble" was used.

The picture drawn by counsel on page 16 of their brief is a fanciful presentation of imagined horrors. Without pursuing the subject further, we assert without fear of any successful contradiction that the only substantial fact or truth in the record disclosed is that the plaintiff in error has not complied with the conditions of the contract in regard to "planking" certain mud streets.

We beg your Honors to bear in mind that we are not arguing the merits of the case; we answer the gross exaggerations of the consequence of delay, which, if unnoticed, might influence the decision of the Court on the real issues presented. If the terrible consequences would ensue it is a wonder that during the TWENTY-NINE (29) years which have elapsed since the obli-

gation was first contracted, the City of New Orleans has not by the mere force of gradual "wear and tear," been converted into a chaotic ruin, engulfing railroad and all!

Eleven years ago the present company acquired its franchises; it was the direct and literal successor of itself, having enjoyed the same privileges for twenty years preceding, under the same stipulations, and only now the authorities discover that gradually the city is wearing away under their feet because certain "mud streets" in remote parts of the city, about which no one ever concerned himself, have not been "planked." No other demand was ever made until now.

What we claim to have just right of complaint against counsel for defendant in error, for, and hence the answer we make, is that, intentionally or not, his brief would create the impression that the plaintiff company is utterly, recklessly and defiantly forgetful of all its obligations to the city: that it controls all her streets; that these are all impassable, unfit for traffic; that during this litigation "*those who dwell in the city of New Orleans will suffer during that time, on account of the deplorable condition of the streets named in the contracts, inconvenience and damage and be exposed to danger to life and to limb, etc.,*" when by the pleadings and testimony the controversy is distinctly narrowed down to the "planking" of some streets which for twenty-nine years nobody thought of or cared about.

For the work itself the company is amply responsible; besides, it has given a good and solvent bond in an amount far exceeding the probable cost of the work.

If "injury to life and limb" happens, the company must respond in damages.

If the conditions described by opposing counsel existed, the company might soon find it expensive economy to leave "*streets impassable, bridges over drains broken and fallen in, and the drainaige it bound itself to preserve obstructed and destroyed.*"

We have devoted this much to this branch of the argument

because, in the face of the concession that there is *no color* for the motion to dismiss, this woeful picture is presented in support of the *petition* for relief.

Is it wrong to say that the city is over zealous in this cause? The record and every step in the proceeding shows it.

The honored Chief Justice of the Supreme Court of Louisiana, influenced by this zeal, was led into obvious error when he refused to allow the writ, although ample bond was tendered, to operate a supersedeas: an error which to correct we were compelled to appeal to this tribunal, applying to Mr. Justice L. Q. C. Lamar, as in his circuit.

The error was corrected. Printed Transcript, pp. 270-271.

II

We proceed now more directly to the argument on the motion to "dismiss or affirm."

It is hardly necessary to repeat that there is "no color for the motion to dismiss," because that is admitted by mover.

This is so absolutely uncontroverted that the discussion might end with it but for the contention of counsel for mover, "that in the case of Chanute City vs. Trader, 132 U. S., page 210, this Court has departed from its well established rules and doctrines of practice in this regard, and has reversed all its interpretations of paragraph 5, rule 6, which, in certain cases, permits uniting a motion to affirm with a motion to dismiss.

That case, it is contended, has established the rule of this Court to be that a "motion to affirm" can be made and will be considered, although there is

a. Neither color for motion to dismiss; or

b. Any question of the jurisdiction of the Court.

In other words, the contention is that in the *Chanute City case*, this Court *has* overturned the established interpretation of paragraph 5, rule 6, and practically established the jurisprudence to be that a "motion to affirm" will be entertained and

considered in all cases. Such is the logical consequence if movers' interpretation of that decision prevails.

This whole contention is answered by the facts :

1st. That in Chanute City vs. Trader, the Court expressly disclaimed any intention of disturbing its prior jurisprudence.

2d. That since that decision the interpretation settled by prior decisions has been adhered to and applied.

Referring to the decision, it will be observed, that this Court, with that clear differentiation which has always marked its rulings, took care to say that it considered its finding to rest exclusively and entirely upon the particular features of that case, and expressly disclaimed putting upon the subdivision 5 of rule 6 any different interpretation from that which had prevailed to that time. The Court said: "*But without putting a different interpretation of subdivision 5 of rule 6, from that which has hitherto prevailed, we are of opinion that the judgment in the present case must be affirmed.* A proceeding by mandamus *to compel the levy of a tax to pay a judgment* is in the nature of execution. The rights of the parties to the judgment in respect of its subject matter were fixed by it being rendered. If the prosecution of writs of error to the execution of process to enforce judgments is permitted when no real ground exists therefor, such interferences might become intolerable. This Court, in the exercise of its inherent power and duty to administer justice, should, *independently of subdivision 5 of rule 6, to reach the mischief by affirming the action below. This is a proper case for doing so.*"

The Court in no manner departed from the interpretation of subdivision 5 of rule 6, which it had placed upon it in numerous cases before, which it cited; as, Hinckley vs. Morton, 103 U. S. 764; School District vs. Hall, 106 U. S. 428; 113 U. S. 687; 128 U. S. 578; New Orleans vs. Construction Co., 129 U. S. 45; Alaska, 130 U. S. 101; in all of which cases the practice not to consider the motion to affirm unless there is some color of right to a dismissal was adhered to. In Micas vs. Williams, 104 U. S. page 556, and in Swoope vs. Leffingwell, 105 U. S. page 3, the motion to dismiss hung on very slender ground, but the Court would not have considered the motion "to affirm" without some

color of right to that "to dismiss." In Micas vs. Williams, 104 U. S. 556, the jurisdiction of the Court was ascertained and established by affidavits filed by plaintiff in error in opposition to the motion to dismiss. The Court said :

"These affidavits establish the fact that the value of the matter in dispute exceeds $5000 : the motion to dismiss is therefore denied. *But on looking into the record* we are entirely satisfied that the writ was taken for delay. No assignment of error has been annexed to be returned with the writ, as required by section 917 of the Revised Statutes, and every question presented by the bill of exceptions or suggested upon the argument appears to us so frivolous as to make it improper to keep the case for any further consideration. *There was on the record as it stood when these motions were made at least* SUFFICIENT COLOR OF RIGHT *to the dismissal to justify us in entertaining with it a motion to affirm, in accordance with the provisions of rule 6, paragraph 5.*

In the case of Swoope vs. Leffingwell, 105 U. S. p. 3, the motion to dismiss was denied, and that to affirm was granted ; but the Court said : "We have jurisdiction of these cases : the motion to dismiss is therefore denied, but as the only federal question presented on the merits was decided by the Court below in accordance with our rulings in National Bank vs. Matthews, No. 8 U. S. and National Bank vs. Whitney, the motion to affirm is granted." Surely there is nothing in this to change the general rule. In the case of Whitney vs. Cook, 99 U. S. 607, a motion to affirm was denied in these words: "This is a motion to affirm only. Our amended rule allows a motion to affirm to be united with a motion to dismiss. This implies that there appeared on the record at least some color of right to a dismissal. That is not pretended in this case. We are therefore compelled to deny the motion." The only other case noted by this Court in the case of Chanute City vs. Trader, as resembling the conditions of that case is S. C. Tryon, 105 U. S. 367. The Court simply says : "The ground for making motion to dismiss was that there was no bill of exceptions, but only a finding of facts and conclusions of law.

'The Court overruled that ground, but it is difficult to see

from the purport of that case what color of right there was to a dismissal, yet it affirmed the decree on consideration of the finding of the fact." Obviously, these cases, Micas vs. Williams, S. C. Tryon and Swoope vs. Leffingwell, were cited to this Court in support of the motion to affirm in *Chanute City vs. Trader*, and are reviewed as showing the utmost liberality of construction ever accorded by this Court, in the interpretation of the rules in question.

We have seen that in affirming the judgment in that case this Court expressly disclaimed any modification of the interpretation of paragraph 5 of rule 6, theretofore established by its decisions. To show how firmly this jurisprudence is established, we will, perhaps more for convenience of the Court than because we deem it necessary, collate other cases which our research has discovered, bearing on the question. In Lynch vs. Debernal, printed in the Appendix to 131 U. S. Reports, a motion to dismiss was denied, "*because it involved looking into the merits.*" In 129 U. S., 45, above cited, the Court said, "The motion to dismiss is therefore denied, and *as we do not think there was color for it*, the motion to affirm must be denied also." In Walston vs. Nevin, 128 U. S., 578, this Court said: "*When on a motion to dismiss a writ of error or an appeal for want of jurisdiction, or affirm* the judgment of the Court below, *it appears that there was color for the motion to dismiss and that the contention of the plaintiff in error or of the appellant, has been often pressed upon by th's Court, and as often determined adversely, the motion to affirm will be granted.*" In the case of *Bell's Gap R. R. vs. Pennsylvania*, page 236, 134 U. S., the Court said: "It cannot be denied that the plantiff in error in its appeal and specification of objections to the tax, did raise a question under the constitution of the United States. That question remained in the record as the foundation of the proceedings in the Court, and whether adverted to or not, was necessarily involved in the final decision. We think it clear, therefore, that the writ of error cannot be dis-

missed. *Our only doubt is whether under our rules there was sufficient color for the motion to dismiss to authorize us in considering the motion to affirm.* As, however, the Supreme Court does not seem to have passed on the Federal question in the record, *we may consider there was color for making the motion to dismiss.*"

We have been particular thus to cite to your Honors very nearly, if not every case in which this paragraph 5 of rule 6 has been under consideration, and with the exception of that single case of Chanute City vs. Trader, which, it will be remembered, expressly left the rules undisturbed, not one is found in which the Court has not adhered to the principle of the interpretation, that it will not consider a motion to affirm unless there is color for the motion to dismiss. In the case just cited, 134 U. S., the Court said that the failure on the part of the Supreme Court of the State to pass upon the federal question, might be considered as giving color to justify the motion to dismiss, so that although entertaining the motion to affirm, it did so because it found color for the motion to dismiss. In our case it is true the Supreme Court of Louisiana did not deem it necessary to give any reasons for overruling the defence, but it did overrule it, and in a not less summary manner than it overruled the defences upon other points. We quote from the opinion of the Court, page 258, printed Transcript: "In relation to the exceptions, it suffices to say that the petition clearly discloses a valid cause of action; that there was a proper demand for compliance; *that the suit itself is a putting in default*, if any was necessary; that the statute attacked is not special or local, but general and remedial only; *that it destroys no vested right or impairs the obligation of no contract.*"

The answer, Printed Transcript, page 8, sets up in most specific terms that the statute sought to be enforced against the defendant impairs the obligation of its contract. After having pleaded the unconstitutionality of the act, as a *Louisiana* statute, the answer proceeds: "Even if constitutional, that is to say, valid and operative under the laws of this State, the law can have no retroactive effect to change or affect the rights of the parties under contracts entered into prior to its passage."

"To attribute such effect to this act as operative upon this appearer would impair the obligations of the contract aforesaid, in violation of Article 1, Section 10, No. 1 of the Constitution of the United States, and Article 1, Section 9, No. 3 of the same, which are expressly pleaded and invoked in protection of its rights under the contract in the premises."

It seems, therefore, that we have shown to your Honors, First, that the settled jurisprudence of this Court still is that a motion to affirm will not be entertained unless there is a color for a motion to dismiss: Second, that there is no color for the motion to dismiss when, the jurisdiction being conceded, the record discloses a question entirely new, and special to the present case.

III.

If this honorable Court accepts the above conclusion, the motions are disposed of without any inquiry into merits of the question presented by the record. We confidently assert, however, again compelled to follow the line of argument pursued by mover, that it is not true or correct, "that the question upon which the jurisdiction of the Court depends is frivolous."

It is not pretended that the precise issue or question in this case is or ever has been settled by this Court, except in a general way, that laws affecting the "remedy" do not usually fall in the category of impairing the obligation of contracts. This is merely a begging of the question. If it is true that laws affecting only the remedy do not impair the obligation of the contract, it is equally true that if under pretense of affecting or changing the remedy the obligations or the rights under the contract itself are impaired or changed to the detriment of either party, the statute falls under the prohibition proclaimed in the Constitution of the United States. This was expressly held in 1st Howard, page 311, Bronson vs. Kinzie, from which we submit the following extract:

"If the laws of the State, passed afterwards, had done nothing more than change the remedy upon contracts of this description, they would be liable to no constitutional objection.

For undoubtedly a State may regulate at pleasure the modes of proceeding in its Courts in relation to past as well as future contracts. It may for example shorten the period of time within which claims shall be barred by the statute of limitation. It may, if it thinks proper, direct that the necessary implements of agriculture or the tools of the mechanic, or articles of necessity in household furniture shall, like wearing apparel, not be liable to execution on judgments. Regulations of this description have always been considered in every civilized community as properly belonging to the remedy to be exercised or not by every sovereignty, according to its own views of policy and humanity. It must reside in every State to enable it to secure its citizens from unjust and harassing litigation and to protect them in those pursuits which are necessary to the existence and well being of every community. And although a new remedy may be deemed less convenient than the old one, and may in some degree render the recovery of debts more tardy and difficult, yet it will not follow that the law is unconstitutional. Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. *But if that effect is produced, it is immaterial whether it is done by acting on the* REMEDY *or* DIRECTLY *on the contract itself. In either case it is prohibited by the constitution.*"

The Court, after referring to its own previous decisions, which settled the point to their satisfaction, say :

"We have quoted the entire paragraph, because it shows in a few plain words, and illustrates by a familiar example the connection of the remedy with the right. It is the part of the municipal law which protects the right and the obligation which it enforced and maintains it. It is this protection which the clause in the constitution now in question mainly intended to secure. And it would be unjust to the memory of the distinguished men who framed it to suppose that it was designed to protect a mere barren and abstract right, without any practical operation upon the business of life. It was undoubtedly adopted as a part of the constitution for a great and useful purpose. It was to maintain the integrity of contracts, and to secure their faithful execution throughout this union by placing them under the protection of the constitution of the United States. And it would but ill become this Court, under any circumstances, to depart from the plain meaning of the words used, and *to sanction a distinction between the right and the remedy*, which would render this provision illusive and nugatory—mere words of form, affording no protection and producing no practical result." (Italics ours).

The full and exhaustive discussion of the merits of the case

by mover seems to us, in itself, sufficient admission that the question at issue is not one which your Honors will dispose of without a hearing. It is impossible to reach a just conclusion in this case without full and thorough examination of the statute in question and its effects. Will this Court depart from its record of a century, and investigate an *original* issue or question on a motion to affirm, coupled with a motion to dismiss, for which there is no shadow of color?

It is not pretended that the question whether the statute assailed impairs the obligation of the contract between the plaintiff in error and the City of New Orleans had ever been decided by this Court. The contention of the defendants in error is that the statute has no effect upon the contract, because it in no manner alters or changes the rights or duties of the parties, and that the same redress which the city now seeks under the special law, could have been had under the laws prescribing the ordinary modes of procedure and execution of judgments in force in Louisiana when the contract was made. If this were true the question arises, why was the statute passed? And why does the City of New Orleans seek this short cut to affirm and maintain her rights, when she could have done just as well without subjecting herself to the chances of a defense which we call upon this Court to interpret and apply?

That the duties, rights and obligations of parties to the contract must be construed by reference to the laws as they were when the contract was made will probably not be disputed. (See Sedgwick on Constitutional Limitations, pp. 604, 610 and 612.

If any argument were necessary to show that, under the laws of Louisiana as interpreted by the Supreme Court of the State, a change of legislation, by which the harsh and summary process of mandamus is substituted to enforce ordinary contract obligations in lieu of the usual judicial procedures existing when the contract was made, effects *substantially* the rights and

duties or "*burdens*" of the parties or one of them, we could not do better than submit to your Honors the decision of that Court in the case of *the State on the Relation of the City of New Orleans against the New Orleans & Carrollton Railroad Co.*, 37 A. 569. That case was identical in object and form of proceeding with the case now before your Honors' except that it was instituted to enforce the obligations of the contract by proceeding for *mandamus* prior to the enactment of the statute under consideration; in other words, it was an attempt to enforce by mandamus the obligations of the contract, interpreted according to the laws of Louisiana in force at the time of the bringing of the suit and the time when the contract was entered into. The Supreme Court of the State refused the apppicationfor the writ of mandamus, and among others, gives the folowing reasons:

"*The writ of mandamus is the most arbitrary of all the forms in which judicial authority is exercised.*

It shuts out the right of trial by jury, it substitutes for the ordinary and cautious modes of judicial proceeding an extremely harsh and summary procedure.

Instead of a mere judgment, settling simply the rights of litigants and subject to execution by ordinary process, it invokes an arbitrary judicial mandate, to be executed by the judge himself, and disobedience to which is punishable by imprisonment for contempt, or by the harsh remedy of distringas.

It is properly characterized as an extraordinary remedy, only to be applied in extraordinary cases; which law and jurisprudence have carefully defined and subjected to close limitations, amongst which may be mentioned the following:

1. It cannot be invoked except to compel the performance of some clear unequivocal duty imposed by law, and never to enforce obligations arising simply from contract. High on Extraordinary Remedies, No. 321.

2. Not only must the duty be clear and imposed by law, but mandamus only lies when there exists no other adequate or legal

remedy. C. P., 830, 831; High on Ext. Rem. 10, 15, 283; State ex rel. Fix vs. Herron, 20 A. 859; also 9 A. 259; 10 A. 415; 12 A. 342. Commonwealth vs. Rossiter, 2 Binn., 360. People vs. Head, 25. Ill., 325; King vs. Waterworks Co., 6 Ad. and E. 325.

3. Wherever an express remedy is afforded by statute, plain and specific in its nature, and adequate redress, mandamus will not lie. High on Ext. Rem. Sections 16, 179; State vs. Supervisors, 29 Wis. 79; State vs. McAuliffe, 48 Mo., 112.

This is particularly applicable where the same statute which imposes the duty indicates and provides the remedy. L. & N. R. R. Co., vs. State, 25 Ind., 177; State vs. Supervisors, 29 Wis., 79.

In the instant case everyone of the foregoing rules applies to exclude the remedy by mandamus, and their concurrent force is irresistible.

"But the obligation of keeping "Jackson street from curb to curb" is of a DIFFERENT CHARACTER, *and could in no manner be cast upon the defendant company than by its own express and voluntary consent. It is and could be nothing else than a contract obligation.*

"If this company can be compelled by mandamus to fulfil its contract to repair this street, we see not why every other contract for the repair, paving or other work on streets, and indeed every other municipal contract might not be enforced in a similar manner.

"This might conclude the case; but even if we consider the contract in the light of a statute, THE PLAIN MANDATORY REMEDY EXPRESSLY PROVIDED IN ITS TERMS *would necessarily bar the relief by mandamus. Every word down to the last provision, and what is also said in the case about the duties of administrator of improvement, is applicable to the case at bar."*

Now if this is a correct interpretation of the law of Louisiana, and surely for the purpose of discussing the motion to affirm now under consideration your Honors will so consider it, is it not manifest that the statute which gives the remedy refused by the Court under the law as it was, impairs the obligation of the contract? If it is true that the laws of the State are a part of the contract between the parties, and it is equally true that under those laws a writ of mandamus could not have been applied to enforce the obligation of the contract, does not a special stat-

ute granting such remedy in such special and particular cases impair the obligation of that particular contract? It is preposterous to say that a special enactment which supplies so many new conditions and inflicts such radical consequences is a law appertaining to the remedy only. And the Supreme Court of the State said all this without reference to the additional point of hardship arising under the statute, which it could not anticipate, because created only by the statute, which is that a different and onerous method is provided for executing the judgment. The judgment must fix the time within which the work shall be done, and if necessary, place the sheriff or executive officer of the Court in possession of the revenues and property of the company, and do the work himself. He may inflict imprisonment if the *order*—the mandamus—is not obeyed, etc.

It is idle, as already referred to, for mover to say that the statute impairs no obligation and imposes no heavier burden than could be invoked under the laws of the State, in the face of the above decision of the Supreme Court.

It is true the laws of Louisiana gave an action for *specific performance* of a contract, and provided modes of executing the judgment. But it must be by ordinary suit, petition and citation; ordinary delays, etc. The right to plead fully and regularly; the right to trial by jury; the right to plead "off-set" or "compensation" or "in reconvention"—all are taken away; and not by a general statute or rule of practice, in courts of law, to operate in the future; but under a particular and special statute directed only against *certain corporations*—(See statute in appendix to mover's brief)—a clear discrimination and a taking away of property and rights without *due* process of law. Technically, this assertion may seem strained, but it is correct in fact.

It was a summary break-neck proceeding which made a full, considerate and accurate defence well-nigh impossible.

In a mandamus proceeding the rules of practice say we

must plead all defences at once and at the same time. On a rule to show cause we are hurried before the judge to try important and comprehensive relations and duties springing from our contracts. No matter how vague and indefinite and dragnet-like the allegations of the petition, we must come prepared on three days' notice to plead exceptions, answers, etc., and try the case. Now to illustrate the truth of these assertions, we ask your Honors to read the petition, the report of B. M. Harrod, City Surveyor, Printed Transcript, pp. 4 et seq.; the testimony of said Harrod, p. 16 et seq., and the judgment of the Court, pp. 58 and 59, and your Honors will see that the proceeding is indeed a sweeping dragnet: although the testimony clearly shows that all ordinary repairs, such as became necessary to bridges—which are the coverings to small culverts, at street intersections made necessary by our surface drainage—repairs to tracks, to roadways, etc., are regularly and constantly made as soon as they become necessary—and that really nothing was left undone except the "wood-planking" already spoken of—the judgment of the Court is a mere (literal) transcription of the report of the Surveyor made to a committee of the City Council on the 27th of April, 1889—without attempt to eliminate at least so much as was indisputably shown to be either not necessary or to have been done. Perhaps the Court and learned counsel thought that could be regulated by the execution of the judgment, and the judgment fixed three months "as the time within which the work shall be done."

We understand that in no possibility will your Honors have to review these facts except it be—and for that reason the reference is made, to ascertain to the fullest scope the change effected by the statute in question as operating upon the rights and duties of plaintiff in error, under her contracts with the City of New Orleans.

We can only add to foregoing, since to this extent we are practically discussing the merits of the question presented, that

the *statute* operates the more directly and injuriously upon our contracts, because these *in terms* provide the means of enforcement and the penalties for violation. The plea was unsuccessfully made. It enters strongly into the present question.

In this connection we refer once more to the decision of the Supreme Court herein above cited, and call special attention to last paragraph quoted.

Obviously the argument was addressed to the Court, that the *ordinances of the city council* making or directing the contracts were *legislative*, having the force of *statutes*—: hence, the obligations of the contract were *public duties*, the performance of which could be enforced by *mandamus*. What does the Court say? And the correctness of the *dictum* cannot be questioned:

The application for the writ having been disposed of on, we might say, general principles, the Court say:—

"This might conclude the case; but if we consider the contract in the light of a *statute, the plain* MANDATORY *remedy expressly provided in its terms* WOULD NECESSARILY BAR THE RELIEF BY MANDAMUS. *Every word down to the last provision, and what is also said in the case about the duties of* ADMINISTRATOR OF IMPROVEMENTS, *is applicable to the case at bar.*"

The contracts in all these cases are identical. In this above cited case, as a *special reason* for refusing the mandamus the Court said that in any event the mode of enforcement (through the Administrator of Improvements, a charter officer) provided in the contract would exclude the attempt to enforce it by means of the writ of mandamus.

This point is expressly pleaded and the averment made that proceedings should emanate through the Administrator of Improvements.

Now, if the decision of the Supreme Court of Louisiana is good law, and your Honors will surely so hold as between citizens of that State, the mode of enforcing the contract, written into it as part thereof, is the law which the parties have made unto themselves and which neither the legislature can not read out of it or impair.

It is, perhaps, a circumstance worthy of consideration, that the city's pleadings are not as candid and direct as they might be expected from a great "sovereign" corporation proceeding against her own people.

The decision of the Supreme Court hereinabove referred to had been rendered. Relator knew that under the general laws of the State application for a *mandamus* could not succeed; the statute, Act No. 133, of 1888, had in the meantime been passed. But relator, though well knowing that, if at all, the mandamus can only issue as authorized by this special statute, the city does not, with that candor that would become her better, and which might be justly expected, declare plainly and directly on this statute, but consciously evades it and posts herself in a position just barely tenable, behind an averment which is not true technically, and a mere general reference to the special law on which she must stand or fall.

The following, taken from petition, transcript, page 3, is all it contains, excepting the matters of fact, on which the application for mandamus is based. We copy:

"Relater further avers that it is the *absolute duty* (?) of said New Orleans City & Lake R. R. Company to immediately comply with all its obligations, and that relator, *by express provision of law*, is entitled to the issuance of a writ of mandamus to compel such compliance."

Your Honors can not fail to observe the disingenuous duplicity of this averment. If it be true that the defendant—plaintiff in error—owed the city an "absolute duty" in the sense in which the phrase must be interpreted in an application for the *mandamus*, then it was not necessary to point to "express provision of law;" and if only under "*express* provision of law" the city could enforce these "contract obligations" by means of the writ of mandamus, the allegation that the company defendant owed an "absolute duty" is wholly "gratuitous" and would still, moreover, be not true. The special law could not change the nature of the obligation, even though it might change the manner or means of enforcement.

To evade or circumvent the very defence which we ask this high Court to consider, this indirect form of pleading is resorted to. The plain, ordinary contract obligations are converted into an "*absolute duty*," to fit them to the requisites of a mandamus proceeding; but remembering that the Supreme Court of the State had refused in such a case to recognize this important transmutation, the allegation is reinforced by the averment that "*by express provision of law*" relator was entitled to the writ of mandamus.

Obviously relator feared that had he, *on the face of the papers*, relied wholly and exclusively on this special express provision of law enacted in 1888, that he might have gone out of Court on a "*general demurrer*," or, in civil law phrase, an "*exception that the petition disclosed no cause of action.*" So the defendant, not informed what this "express provision of law" was, on which this application for so unsual, exceptional and extraordinary a remedy was demanded, was forced to *assume* that it must be this Act No. 133 of the Acts of 1888 of the General Assembly of Louisiana, and plead inferentially and in a sort of alternate form.

We refer your Honors respectfully to our "*Exception and Answer*," printed Transcript, pp. 7 and 8.

With this, it seems to us, we can leave the cause with your Honors, in full confidence that we will not be denied a full hearing before this tribunal.

The *motion to dismiss* is confessedly without color of right: there is no defect of form and no doubt of jurisdiction: the *motion to affirm* should therefore not even reach the point of being considered. But if considered, we finally most earnestly and respectfully submit that we have shown enough of the nature of controversy and its scope to place it high above the suspicion of being "gratuitously" and "*frivolously*" tendered, for the mere sake of obtaining delay. If it be true that the city's rights were quite as effective under the general laws of the State, as relator

contends, she has herself to blame for the delay which is necessary to dispose of a defence which she compels us to make. We assert as a fact which our adversary will not gainsay, that any cause, of any nature whatever, can be prosecuted to final judgment, in the court of last resort, in an average time of not more than six months.

It was not the "time" that pressed the city; but she invokes the executioner before the sentence is pronounced.

It may be, that when the cause is finally heard, that this greatest Court upon earth may find and conclude that a special statute enacted long after the date of a private contract, specially enacted to apply to a particular kind of contracts between a particular class of persons—corporations—and permitting or directing that the obligations of the contract may be enforced by means of the harsh and peremptory commands of the writ of mandamus, does not impair the obligation of a contract and is therefore "constitutional."

But if that conclusion is not so obvious now as to be spontaneously suggested by the mere statement of the proposition, the contention cannot be called *frivolous;* and the plaintiff in error is entitled to the benefit of the doubt until final hearing.

We believe it may be safely asserted that this cause presents the first instance in this Court of the attempt to substitute "proceedings by mandamus" for the ordinary judicial procedure through which contract obligations are enforced *between the parties.*

It is a perversion of terms to call such an attempt a "*remedial* measure; it is the destruction of a system built on the accumulation of centuries of wisdom and experience, in which the administration of justice is enshrined, to make way for and substitute in its stead—as to certain persons only—a special and exceptional proceeding, confessedly harsh and "*extraordinary*"; never favored; nowhere recognized in any system of laws on the

civilized globe, except as a necessity to meet conditions beyond the reach of ordinary legal proceedings.

"It cannot be invoked except to compel the performance of some clear, unequivocal duty imposed by *law*, and *never* to enforce obligations arising simply from contract." *High on Extraordinary Remedies*, No. 321; *Supreme Court of Louisiana* in the case above cited.

And the same authorities assert, and no one will dispute the conclusion: "Not only must the duty be clear and imposed by law, but mandamus only lies *when there exists no other adequate or legal remedy.*"

Add to all this, that the question is not merely on the right and power of the legislature to grant this remedy, as a question of general power, but whether when the legislature accords this remedy, by a special statute to one favored suitor, the City of New Orleans, which may sue directly, or through "any officer" ("or *any five taxpayers*,"), against a limited class of subjects, *corporations* (natural persons retain the privilege of being sued *via ordinaria*), "who may *heretofore* have contracted with, etc.," whether such enactment can be invoked to enforce an obligation contracted eleven years prior to its passage?

This question, taking significance and importance from the recognized difference in form and effect, between an application for a *mandamus* and its effect, and the proceedings leading to the usual and ordinary judgment and its execution, is surely not "frivolous," nor has it ever been settled by any previous adjudications of this Court. It is as original as it is important; and the importance of its careful and considerate adjustment to the law and jurisprudence of the whole country infinitely outweighs the importance of time within which the final judgment shall be executed.

It is therefore respectfully submitted that both motions should be denied and the cause be permitted to be regularly and fully heard on the merits.

CHARLES F. BUCK,
Counsel for Plaintiff in Error.

157-219

FILED.
JAN 6 1896
JAMES H. McKENNEY,
CLERK.

157-219

SUPREME COURT OF THE UNITED STATES.

No. 29.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

NEW ORLEANS CITY AND LAKE RAILROAD COMPANY,

Plaintiff in Error.

versus

STATE OF LOUISANA EX REL. CITY OF NEW ORLEANS,

Defendant in Error.

BRIEF ON BEHALF OF THE NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR.

GEORGE DENÈGRE,
WALTER D. DENÈGRE.

L. GRAHAM & SON, LTD., 44-46 BARONNE ST., NEW ORLEANS.

SUPREME COURT OF THE UNITED STATES.

No. 29.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

NEW ORLEANS CITY AND LAKE RAILROAD COMPANY,

Plaintiff in Error.

versus

STATE OF LOUISANA EX REL. CITY OF NEW ORLEANS,

Defendant in Error.

BRIEF ON BEHALF OF THE NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR.

This is a suit brought by the City of New Orleans on the relation of the State of Louisiana for a mandamus against the defendant, the New Orleans City & Lake Railroad Company to compel the performance of certain alleged contract obligations with regard to the repair, etc., of streets through which the company's tracks pass.

The application for a mandamus is made under Act No. 133 of the Acts of the General Assembly of the State of Louisiana of 1888, fully quoted in the Appendix to this brief.

The contract under which it is alleged that the New Orleans City & Lake Railroad Company incurred the obligations which it is sought to enforce by mandamus bears date the 2d day of October, 1879 (see Transcript, p. 156), nine years before the mandamus act of 1888 was passed.

Under the general laws of the State of Louisiana and up to the passage of the Act of 1888, such a proceeding could not have been maintained, as was expressly decided in the case of the *City of New Orleans ex rel. State of Louisiana vs. New Orleans City & Lake Railroad Company*, 37 An. 589. In that case the Supreme Court of the State of Louisiana refused the application for a writ of mandamus, saying (p. 591):

"The writ of mandamus is the most arbitrary of all the forms in which judicial authority is exercised.

"It shuts out the right of trial by jury. It substitutes for the ordinary and cautious modes of judicial proceeding, an extremely harsh and summary procedure.

"Instead of a mere judgment settling simply the rights of litigants and subject to execution by ordinary process, it invokes an arbitrary judicial mandate, to be executed by the judge himself, and disobedience to which is punishable by imprisonment for contempt, or by the harsh remedy of *distringas*.

"It is properly characterized as an *extraordinary* remedy, only to be applied in extraordinary cases, which law and jurisprudence have carefully defined and subjected to close limitations, amongst which may be mentioned the following:

"1. It can not be invoked except to compel the performance of some clear, unequivocal duty imposed by *law*, and never to enforce obligations arising simply from *contract*. *High on Ext. Remedies*, Sec. 321; *State vs. Zanesville Turnpike Co.*, 16 Ohio, 308; *State vs. Peterson R. R. Co.*, 43 New Jersey L., 505; *State vs. River Bridge Co.*, 20 Kansas, 404.

"One reason of this distinction is obvious. The obligations of contracts are commutative and reciprocal. The duty of one party to comply with the obligations as-

sumed by him does not depend simply upon the fact of his assumption, but involves the question as to whether the other party has fulfilled his own reciprocal obligations, such fulfilment being a condition precedent to his right to exact performance from his adversary. A duty, thus contingent and dependent, is not, on its face, sufficiently clear and absolute to justify the application of such a remedy.

"2. Not only must the duty be clear and imposed by law, but mandamus only lies when there exists no other adequate legal remedy. C. P. 830, 831; *High on Ext. Remedies*, Secs. 10, 15, 283; *State ex rel. Fix vs. Herron*, 29 An. 850; also 9 An. 250; 10 An. 415; 12 An. 342; *Commonwealth vs. Rossiter*, 2 Binn. 360; *People vs. Head*, 25 Ill. 325; *King vs. Water Works Co.*, 6 Ad. and E. 325.

"Wherever an express remedy is afforded by statute, plain and specific in its nature and adequate to redress, mandamus will not lie. *High on Ext. Rem.*, Sec. 16, 179; *State vs. Supervisors*, 29 W s. 79; *State vs. McAuliss*, 48 Mo. 112.

"This is particularly applicable where the same statute which imposes the duty indicates and provides the remedy. *L. & N. A. R. R. Co. vs. State*, 25 Ind. 177; *State vs. Supervisors*, 29 Wis. 79.

"In the instant case, every one of the foregoing rules applies to exclude the remedy by mandamus and their concurrent force is irresistible.

* * * * * * *

"But the obligation of keeping 'Jackson street from curb to curb' in repair is of a different character, and could in no manner be cast upon the defendant company otherwise than by its own express and voluntary consent. It is and could be nothing else than a contract obligation.

* * * * * * *

"If this company can be compelled by mandamus to fulfil its contract to repair this street we see not why every other contract for the repair, paving or other work on streets and, indeed, every other municipal contract might not be enforced in a similar manner.

* * * * * * *

"This might conclude the case; but even if we considered the contract in the light of a statute, the plain mandatory remedy expressly provided in its terms would necessarily bar the relief by mandamus."

Such being the law of Louisiana, and Act 133 of 1888, providing a summary remedy by mandamus only against *certain* corporations, having been passed long subsequent to the contract between the city of New Orleans and the New Orleans City & Lake Railroad Company, plaintiff in error plead that the said act impaired the obligations of the contract aforesaid in violation of Art. 1, Sec. 10, No. 1, and Art. 1, Sec. 9, No. 3, of the Constitution of the United States.

It is admitted that this court has decided that laws affecting only the remedy do not impair the obligation of a contract, and that without impairing the obligation of a contract the remedy may be modified or changed; but it is equally true that if, under pretence of effecting or changing the remedy, the obligations or rights under the contract itself are impaired or changed to the detriment of either party, the statute falls within the prohibition of the Constitution of the United States.

That the duties and obligations of the parties to the contract must be considered with reference to the law as they were when the contract was made, will probably not be disputed.

If these acts so changed the nature and extent of the existing remedies as to materially impair the rights and interests of the owner, they are just as much a violation of the contract as if they directly overturned his rights and interests. *Green vs. Biddle*, 8 Wheat. 1; *Bronson vs. Kinzie*, 1 How. 311, 316.

It is contended that Act 133 of 1888 did not make any substantial change in the remedy theretofore provided by the laws of Louisiana for the enforcement of contracts, but only made that remedy more summary, and that the

mandamus proceeding is really only a speedier method of obtaining specific performance, and that prior to the Act of 1888 a suit for specific performance would lie.

Under the laws of Louisiana, as expressed in Arts. 1926 and 1927, C. C., it is only when no adequate compensation can be made in damages that the courts in Louisiana can decree specific performance of the contract. *City and Levee Board vs. Railroad Company*, 44 An. 64, 67.

But even in such cases the remedy must be pursued by ordinary suit, petition and citation, ordinary delays, etc.; the right to plead fully and regularly, the right to trial by jury, the right to plead offset or compensation, or in reconvention, and the right to object that adequate compensation can be made in damages remain in full force. Under this special legislation of 1888, all these rights are taken away, and, instead, is substituted a summary break-neck proceeding, which makes a full, considerate and accurate defence well nigh impossible.

In a mandamus proceeding the rules of practice require the defendant to plead at one and the same time, and no matter how vague and indefinite and general are the allegations of the petition, the defendant must come, on a few days' notice, prepared to plead exceptions, answers, etc., and try the case. (*Shaw vs. Howell*, 18 An. 195.) Now, to illustrate the truth of these assertions, we ask your Honors to read the petition, report of B. M. Harrod, City Surveyor (Printed Transcript, p. 4, *et seq.*); the testimony of said Harrod (p. 16, *et seq.*), and the judgment of the court (pp. 58 and 59), and your Honors will see that the proceeding is indeed a sweeping dragnet; although the testimony clearly shows that all ordinary repairs, such as became necessary to bridges, which are the coverings to small culverts at street intersections, made necessary by our surface drainage; repairs to tracks, to roadways, etc., are regularly and

constantly made as soon as they become necessary, and that really nothing was left undone except the "wood planking," the judgment of the court is a mere (literal) transcription of the report of the surveyor made to a committee of the City Council on the 27th of April, 1889, without attempt to eliminate at least so much as was indisputably shown to be either not necessary or to have been done. Perhaps the court and learned counsel thought that could be regulated by the execution of the judgment, and the judgment fixed three months "as the time within which the work shall be done."

We understand that in no possibility will your Honors have to review these facts except it be—and for that reason the reference is made—to ascertain to the fullest scope the change effected by the statute in question as operating upon the rights and duties of plaintiff in error under her contracts with the city of New Orleans.

We can only add that this statute operates the more directly and injuriously upon the contracts of the plaintiff in error, because these in terms *provide the means for enforcement and the penalty for violation*. The plea was unsuccessfully made. It enters strongly into the present question.

In this connection we refer once more to the decision of the Supreme Court (37 An. 589) herein above cited, and call special attention to the last paragraph quoted.

Obviously the argument was addressed to the court that the *ordinances of the City Council* making or directing the contracts were *legislative*, having the force of *statutes*; hence, the obligations of the contract were *public duties*, the performance of which could be enforced by *mandamus*. What does the court say? The application for the writ having been disposed of on, we might say, general principles, the court says:

"This might conclude the case; but if we consider the contract in the light *of a statute*, *the plain mandatory*

remedy expressly provided in its terms would necessarily bar the relief by mandamus. Every word down to the last provision, and what is also said in the case about the duties of Administrator of Improvements, is applicable to the case at bar."

The contracts in all these cases are identical. In the above cited case, as a *special reason* for refusing the mandamus, the court said that in any event the mode of enforcement (through the Administrator of Improvements, a charter officer) provided in the contract would exclude the attempt to enforce it by means of the writ of mandamus.

This point is expressly pleaded and the averment made that proceedings should emanate through the Administrator of Improvements.

Now, if the decision of the Supreme Court of Louisiana is good law, and your Honors will surely so hold as between citizens of that State, the mode of enforcing the contract, written into it as part thereof, is the law which the parties have made unto themselves and which the Legislature can neither read out of it nor impair.

In the case of *Bronson vs. Kenzie*, 1 How. 311, 315, the court says:

"If the laws of the State passed afterward had done nothing more than change the remedy upon contracts of this description, they would be liable to no constitutional objection. For, undonbtedly, a State may regulate at pleasure the modes of proceeding in its courts in relation to past contracts as well as future. It may, for example, shorten the period of time within which claims shall be barred by the statute of limitations. It may, if it thinks proper, direct that the necessary implements of agriculture, or tools of the mechanic, or articles of necessity in household furniture, shall, like wearing apparel, not be liable to execution on judgments. Regulations of this description have always been considered, in every civilized community, as properly belonging to the remedy, to be exercised or not by every sovereignty according to its

own views of policy and humanity. It must reside in every state to enable it to secure its citizens from unjust and harassing litigation, and to protect them in those pursuits which are necessary to the existence and well-being of every community. And although a new remedy may be deemed less convenient than the old one, and may in some degree render the recovery of debts more tardy and difficult, yet it will not follow that the law is unconstitutional. Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of the contract. But if that effect is produced it is immaterial whether it is done by acting on the remedy or directly on the contract itself. In either case it is prohibited by the Constitution.

"This subject came before the Supreme Court in the case of *Green vs. Biddle*, decided in 1823, and reported in 8 Wheat. 1. It appears to have been twice elaborately argued by counsel on both sides, and deliberately considered by the court. On the part of the defendant in that case, it was insisted that the laws of Kentucky in 1797 and 1812, concerning occupying claimants of land, impaired the obligation of the compact made with Virginia in 1789. On the other hand, it was contended that these laws only regulated the remedy, and did not operate on the right to the lands. In deciding the point, the court says: 'It is no answer that the acts of Kentucky now in question are regulations of the remedy, and not of the right to the lands. If these acts so change the nature and extent of existing remedies as materially to impair the rights and interests of the owner, they are just as much a violation of the compact as if they directly overturned his rights and interests.' And in the opinion delivered by the court after the second argument, the same rule is reiterated in language equally strong (see pp. 75, 76 and 84). This judgment of the court is entitled to the more weight because the opinion is stated in the report of the case to have been unanimous; and Judge Washington, who was the only member of the court absent at the first argument, delivered the opinion of the second.

"We concur entirely in the correctnes of the rule above stated. It is difficult, perhaps, to draw a line that would

be applicable in all cases between legitimate alterations of the remedy and provisions which, in the form of remedy, impair the right. But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing."

In *McCracken vs. Hayward*, 2 How. 608, 612, the court say:

"If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence any law which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

Gantly's Lessee vs. Ewing, 3 How. 707, 717:

"This court held in Bronson vs. Kinzie, 1 How. 319, that the right, and a remedy substantially in accordance with the right, were equally parts of a contract, secured by the laws of the State where it was made; and that a change of these laws imposing conditions and restrictions on the mortgagee in the enforcement of his contract, and which affected its substance, impaired the obligation, and could not prevail; as an act indirectly prohibited could not be done indirectly."

Curran vs. State of Arkansas, 15 How. 304, 319:

"But it by no means follows because a law affects only the remedy that it does not impair the obligation of a contract. The obligation of a contract, in the sense in which those words are used in the Constitution, is that duty of performing it which is recognized and enforced by the laws. And if the law is so changed that the means of legally enforcing this duty are materially impaired, the obligation of the contract no longer remains the same."

Von Hoffman vs. City of Quincy, 4 Wall. 552:

"The obligation of a contract 'is the law which binds the parties to perform their agreement.' The prohibition has no reference to the degree of impairment. The

largest and least are alike forbidden. In *Green vs. Biddle* it was said: 'The objection to a law on the ground of its impairing the obligation of a contract can never depend upon the extent of the change which the law effects in it. Any deviation from its terms by postponing or accelerating the period of performance which is prescribed, imposing conditions not expressed in the contract, or dispensing with those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation. Upon this principle it is that if a creditor agree with his debtor to postpone the day of payment, or in any other way to change the terms of the contract without the consent of the surety, the latter is discharged, although the change was for his advantage.

"'One of the tests that a contract has been impaired is that its value has, by legislation, been diminished. It is not, by the Constitution, to be impaired at all. This is not a question of degree or cause, but of encroaching, in any respect, on its obligation—dispensing with any part of its force.'

* * * * * * *

"It is competent for the States to change the form of the remedy, or to modify it otherwise, as they may see fit, provided no substantial right secured by the contract is thereby impaired. No attempt has been made to fix definitely the line between alterations of the remedy, which are to be deemed legitimate, and those which, under the form of modifying the remedy, impair substantial rights. Every case must be determined upon its own circumstances. Whenever the result last mentioned is produced, the act is within the prohibition of the Constitution, and to that extent void."

See *Kring vs. Missouri*, 107 U. S. 233.

In *Louisiana vs. New Orleans*, 102 U. S. 203, 206.

"The obligation of a contract in a constitutional sense is the means provided by law by which it can be enforced, by which the parties can be obliged to perform it. Whatever legislation lessens the efficacy of these means impairs the obligation. If it tend to postpone or retard the en-

forcement of the contract, the obligation of the latter is to that extent weakened. The Latin proverb *qui cito dat bis dat*—he who gives quickly gives twice—has its counterpart in a maxim equally sound, *qui serius solvit minus solvit*—he who pays too late, pays less. Any authorization of the postponement of payment, or of means by which such postponement may be effected, is in conflict with the constitutional inhibition."

In *McGahey vs. Virginia*, 135 U. S. 693:

"It is well settled by the adjudications of this court that the obligation of a contract is impaired in the sense of the Constitution by any act which prevents its enforcement, or which materially abridges the remedy for enforcing it, which existed at the time it was contracted and does not supply an alternative remedy equally adequate and efficacious."

If the contract between the City of New Orleans and plaintiff in error had been entered into subsequent to the passage of the Act of 1888, and that act had been repealed by the Legislature, could not the city have, notwithstanding proceeded by mandamus, claiming that the repeal could not affect any of her prior contracts? It would seem clear that she could. There is certainly a vast difference between having the right to summarily enforce compliance with a contract and being relegated to a suit for damages. Who would deny that in such event the value of the contract had "by legislation been diminished" under the rule laid down in *Van Hoffman vs. Quincy*, 4 Wall. 552, or that the law repealing the right to proceed by mandamus "tended to postpone or retard the enforcement of the contract," and therefore "to that extent weakened" the obligation of the contract, and was, therefore, unconstitutional under *Louisiana vs. New Orleans*, 102 U. S. 203, 206.

If it be true that a repeal of the Act of 1888 could not affect the enforcement of contracts made subsequent to its enactment, it seems to us that the enactment of the Act of

1888 could have no effect upon contracts made subsequent to said enactment; and that the judgment should be reversed.

Respectfully submitted,

GEORGE DENÈGRE,

WALTER D. DENÈGRE.

December 31, 1894.

APPENDIX.

An Act providing a summary remedy against corporations to compel a compliance with certain obligations and contracts with municipal corporations, and providing ways and means to enforce said remedy.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That in all cases where any corporation has heretofore contracted with, or may hereafter contract with, or shall be otherwise legally bound to any parish or municipal corporation in this State, with reference to the paving, grading, repairing, reconstructing or care of any street, highway, bridge, culvert, levee, canal, ditch or crossing, and shall fail or neglect to perform said contract or obligation, the said parish or municipal corporation, or any officer thereof, or any five taxpayers thereof, shall have the right to proceed by a writ of mandamus to compel the performance of said contract or obligation, or any part thereof, which writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury, in vacation as well as in term time, and in case of appeal shall be tried by preference in the appellate court.

SEC. 2. *Be it further enacted, etc.*, That in case any corporation shall fail or neglect to comply satisfactorily with any judgment against it in such proceeding within the time therein fixed (which time shall be fixed by the court at such period within which the work can be reasonably done), it shall be the duty of the court, on contradictory motion and proof taken in the same case, *to issue a writ of distringas against said company, and to order the sheriff to do the work required to be done, and to apply the revenues and property of said company to de-*

157-29
157-219
Supreme Court, U. S.
FILED.
JAN 10 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 29.

NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF LOUISIANA EX REL. CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on Behalf of The State of Louisiana ex Rel. The City of New Orleans, Defendant in Error.

E. A. O'SULLIVAN,
City Attorney of New Orleans.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1894.

No. 29.

NEW ORLEANS CITY AND LAKE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

STATE OF LOUISIANA EX REL. CITY OF NEW ORLEANS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief on Behalf of The State of Louisiana ex Rel. The City of New Orleans, Defendant in Error.

STATEMENT OF THE CASE.

The city of New Orleans, availing itself of the provisions contained in act No. 133 of 1888 of the State of Louisiana, filed its petition in the civil district court of the State, praying for a writ of mandamus in the alternative against the plaintiff in error (The New Orleans City and Lake Railroad Company) to compel the same to perform the conditions entered into by the said company as to the keeping and maintaining in proper order and condition of certain streets through which the railroad passed, according to the stipulations contained in its contract of date October 2, 1879.

the obligation of a contract the remedy may be modified or changed. Such unquestionably is the law, and the position in this controversy assumed by the defendant in error is in accordance with the law. Act 133 of 1888 simply gives an *additional* remedy, and therefore does not impair the obligation of a contract.

It is apparent from the argument submitted and the authorities quoted by the plaintiff in error that he misapprehends the force of the authorities quoted by him to sustain his position that the act in question, which grants a remedy, thereby violates the obligation of a contract.

The authorities cited by plaintiff in error are to the effect that any remedy which would weaken, or abridge, or change, or destroy, or obstruct, or restrict, or diminish, or lessen the efficacy or prevent the enforcement of contracts would be violative of the Constitution, and therefore null; but the act in question does none of these. It is a remedy which does not impair but enable to enforce the obligation which the law presumes the parties assumed with the *bona fide* intention of carrying out. We admit that if contracting parties enter into agreements which they do not intend to fulfill, any law enacted to compel the enforcement by summary process of the obligation would be considered harsh and as impairing and perhaps destroying the means to be adopted to baffle and defeat the just demands of their creditors. It cannot be successfully contended that a law which *adds* remedies to those existing at the time the contract was made to facilitate the parties in the enforcement of the conditions impairs the contract, when in fact it strengthens it and renders it more effective.

The authority cited from the Thirty-seventh Louisiana Annual, 589, has no bearing on the case before the Court. The decision was rendered prior to the passage of the act of 1888, and we hazard the assertion that act 133 of 1888 was made necessary by this decision.

Were a contract made after the passage of act 133 of 1888, the repeal of the act would be null, *quoad* that contract, for the reasons that by repealing the act the remedy of enforce-

ment of the contract would tend "to postpone or retard the enforcement of the contract," and therefore "to that extent weaken(ed)" the obligation of the contract.

We respectfully submit authorities, already presented to the Court in a former brief, which clearly sustain the position of defendant in error:

Sturges *vs.* Crowninshield, 4 Wheaton, 122.
Bronson *vs.* Kinsie, 1 Howard, 632.
Tennessee *vs.* Sneed, 96 U. S., 74.
State *vs.* Bermudez, 12 La. Rep., 352.
Curtis *vs.* Whitney, 13 Wallace, 71.
Walker *vs.* Whitehead, 16 Wallace, 318.
Terry *vs.* Anderson, 95 U. S., 633.
Louisiana *vs.* New Orleans, 102 U. S., 206.
Penniman's Case, 103 U. S., 714.
Baldwin *vs.* Bennett, 6 Rob., 309.

We therefore respectfully submit that the judgment appealed from should be affirmed and the defendant in error have, under the mandate of the Court, the relief sought for in its petition.

Respectfully submitted.

E. A. O'SULLIVAN,
City Attorney of New Orleans.

APPENDIX.

An act providing a summary remedy against corporations to compel a compliance with certain obligations and contracts with municipal corporations, and providing ways and means to enforce said remedy.

SECTION 1. *Be it enacted by the General Assembly of the State of Louisiana*, That in all cases where any corporation has heretofore contracted with, or may hereafter contract with, or shall be otherwise legally bound to any parish or municipal corporation in this State, with reference to the paving, grading, repairing, reconstructing or care of any street, highway, bridge, culvert, levee, canal, ditch or crossing, and shall fail or neglect to perform said contract or obligation, the said parish or municipal corporation, or any officer thereof, or any five tax-payers thereof, shall have the right to proceed by a writ of mandamus to compel the performance of said contract or obligation, or any part thereof, which writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury, in vacation as well as in term time, and in case of appeal shall be tried by preference in the appellate court.

SEC. 2. *Be it further enacted, etc.*, That in case any corporation shall fail or neglect to comply satisfactorily with any judgment against it in such proceeding within the time therein fixed (which time shall be fixed by the court at such period within which the work can be reasonably done), it shall be the duty of the court, on contradictory motion and proof taken in the same case, *to issue a writ of distringas against said company, and to order the sheriff to do the work required to be done, and to apply the revenues and property of said company to defray the expenses incurred in executing the judgment of the court.*

SEC. 3. *Be it further enacted, etc.*, That all laws and parts of laws contrary to the provisions of this act be and the same are hereby repealed.

(Signed) S. P. HENRY,
Speaker of the House of Representatives.

(Signed) JAMES JEFFRIES,
Lieutenant Governor and President of the Senate.

Approved July 12, 1888.

(Signed) FRANCIS T. NICHOLLS,
Governor of the State of Louisiana.

A true copy from the original.

(Signed) JOS. GEBELIN,
Assistant Secretary of State.

Acts of Louisiana, 1888, p. 191.